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Briefings on How To Use the Federal Register
For information on briefings in Washington, DC and Dallas, TX, see announcement on the inside cover of this issue.

Federal Register



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THE FEDERAL REGISTER

WHAT IT IS AND HOW TO USE IT

- FOR:** Any person who uses the Federal Register and Code of Federal Regulations.
- WHO:** The Office of the Federal Register.
- WHAT:** Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
 2. The relationship between the Federal Register and Code of Federal Regulations.
 3. The important elements of typical Federal Register documents.
 4. An introduction to the finding aids of the FR/CFR system.
- WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

- WHEN:** September 21, at 9:00 a.m.
- WHERE:** Office of the Federal Register,
First Floor Conference Room,
1100 L Street NW., Washington, DC.
- RESERVATIONS:** 202-523-5240.

DALLAS, TX

- WHEN:** September 25, at 9:00 a.m.
- WHERE:** Federal Office Building,
1100 Commerce Street,
Room 7A23-175,
Dallas, TX.
- RESERVATIONS:** 1-800-366-2998.

Contents

Federal Register

Vol. 55, No. 172

Wednesday, September 5, 1990

Agency for Health Care Policy and Research

NOTICES

Meetings; advisory committees:
September, 36316

Alcohol, Drug Abuse, and Mental Health Administration

NOTICES

Federal agency urine drug testing; certified laboratories
meeting minimum standards, list, 36317

Army Department

See Engineers Corps

Civil Rights Commission

NOTICES

Meetings; State advisory committees:
California, 36300

Coast Guard

RULES

Ports and waterways safety:
North Landing River, Virginia Beach, VA; safety zone,
36278

Commerce Department

See Export Administration Bureau; International Trade
Administration; National Oceanic and Atmospheric
Administration; Technology Administration

Defense Department

See also Engineers Corps

NOTICES

Meetings:
DIA Advisory Board, 36305
Wage Committee, 36304

Education Department

NOTICES

Agency information collection activities under OMB review,
36305

Employment and Training Administration

NOTICES

Adjustment assistance:
Action Tungsram, Inc., 36334
Glen Raven Mills, Inc., 36334
Love Fashions; correction, 36334, 36335
(2 documents)
Raw Hide Fleshing Machine Corp., 36335
Uranerz, USA, Inc., 36335

Energy Department

See Southeastern Power Administration

Engineers Corps

NOTICES

Environmental statements; availability, etc.:
Missouri River Master Water Control Manual; update,
36305

Environmental Protection Agency

PROPOSED RULES

Air quality implementation plans; approval and
promulgation; various States:
California, 36458
Air quality implementation plans; approval and
promulgation; various States; and air quality planning
purposes; designation of areas:
Oklahoma, 36290
Pesticide programs:
Pesticide applicators certification; notification to
Agriculture Secretary, 36297

NOTICES

Meetings:
Stratospheric Ozone Protection Federal Advisory Council,
36308
Water pollution control:
Individual control strategies (ICSSs); list of waters;
approvals and disapprovals, 36309
Water pollution; discharge of pollutants (NPDES):
Wisconsin; leather tanning and finishing facilities, 36308

Executive Office of the President

See Presidential Documents

Export Administration Bureau

RULES

Export licensing:
Horses for export by sea; exporter certification, 36271

Farm Credit Administration

NOTICES

Meetings; Sunshine Act, 36386-36456

Federal Aviation Administration

RULES

Airworthiness directives:
Cessna, 36264
McDonnell Douglas, 36270
Pilatus Aircraft, Ltd., et al., 36267
Piper, 36268
Schweizer Aircraft Corp., 36269
Airworthiness standards:
Special conditions—
Cessna model 441 airplane, 36259

PROPOSED RULES

Air traffic operating and flight rules:
Minimum Navigation Performance Specification (MNPS)
airspace; high seas and North Atlantic operations,
36592
Airworthiness directives:
Aerospatiale et al., 36284

Federal Communications Commission

RULES

Radio stations; table of assignments:
Montana, 36279

PROPOSED RULES

Radio stations; table of assignments:
Kansas, 36297
Missouri, 36298
New York, 36299

Tennessee, 36298
Texas, 36298

Federal Deposit Insurance Corporation

NOTICES

Agency information collection activities under OMB review, 36314

Federal Emergency Management Agency

RULES

Flood insurance; communities eligible for sale:

Maine et al., 36278

NOTICES

Disaster and emergency areas:

New Hampshire, 36314

Federal Highway Administration

PROPOSED RULES

Engineering and traffic operations:

Construction and maintenance—

General material requirements, 36289

Federal Reserve System

PROPOSED RULES

Bank holding companies and change in bank control

(Regulation Y):

Investment advisory activities and full service securities brokerage services, 36282

NOTICES

Meetings; Sunshine Act, 36386-36456

Applications, hearings, determinations, etc.:

Avery, Robert, et al., 36315

First Blanchester Bancshares, Inc., et al., 36315

Firststar Corp., 36315

PBC Bancshares, Inc., et al., 36316

Food and Drug Administration

PROPOSED RULES

Food for human consumption:

Seafood inspection program, 36289

Medical devices:

Neurological devices—

Electroconvulsive therapy device used in treating severe depression; reclassification, 36578

NOTICES

Committees; establishment, renewal, termination, etc.:

Veterinary Medicine Advisory Committee, 36318

GRAS or prior-sanctioned ingredients:

NutraSweet Co., 36318

Meetings:

Biological products freeze-drying and formulation; international symposium, 36319

Consumer information exchange, 36319

Health and Human Services Department

See Alcohol, Drug Abuse, and Mental Health

Administration; Food and Drug Administration; Health

Care Financing Administration; Health Resources and

Services Administration; National Institutes of Health

Health Care Financing Administration

NOTICES

Medicaid:

System performance review standards, procedures, and methodologies; revisions, 36319

Organization, functions, and authority delegations, 36323

Health Care Policy and Research Agency

See Agency for Health Care Policy and Research

Health Resources and Services Administration

NOTICES

Grants and cooperative agreements; availability, etc.:

Nurse anesthetist faculty fellowships, 36325

Meetings; advisory committees:

September, 36326

Immigration and Naturalization Service

RULES

Nonimmigrant classes:

Guam visa waiver program—

Korea, 36259

Indian Affairs Bureau

RULES

Grants:

Indian business development program, 36272

Interior Department

See also Indian Affairs Bureau; Land Management Bureau

NOTICES

National Environmental Policy Act; implementation, 36327

Internal Revenue Service

RULES

Income taxes:

Consolidated return regulations; removal of tax-exempt status of some health insurance organizations, 36274

PROPOSED RULES

Income taxes:

Consolidated return regulations; removal of tax-exempt status of some health insurance organizations; cross reference, 36290

International Trade Administration

NOTICES

Antidumping:

Metal-walled above-ground swimming pools from Japan, 36301

Antidumping and countervailing duties:

Administrative review requests, 36300

Applications, hearings, determinations, etc.:

Hospital for Special Surgery et al., 36301

International Trade Commission

NOTICES

Import investigations:

Silicon metal from Argentina, Brazil, and China, 36330

Interstate Commerce Commission

NOTICES

Motor carriers:

Compensated intercorporate hauling operations, 36331

Rail carriers:

Railroad revenue adequacy determinations, 36333

Railroad operation, acquisition, construction, etc.:

A&F, Inc., 36333

Justice Department

See also Immigration and Naturalization Service

NOTICES

Pollution control; consent judgments:

Washington Demolitions, Inc., 36333

Labor Department

See Employment and Training Administration; Mine Safety and Health Administration

Land Management Bureau**NOTICES**

Withdrawal and reservation of lands:

Arizona, 36328-36330

(3 documents)

Utah; correction, 36330

Mine Safety and Health Administration**NOTICES**

Safety standard petitions:

Davidson Mining, Inc., 36336

(2 documents)

National Institutes of Health**NOTICES**

Meetings:

National Commission on Sleep Disorders Research, 36326

National Oceanic and Atmospheric Administration**RULES**

Fishery conservation and management:

Ocean salmon off coasts of Washington, Oregon, and California, 36280

PROPOSED RULES

Seafood inspection program [Editorial Note: For a document on this subject, see Food and Drug Administration.]

NOTICES

Endangered and threatened species:

Loggerhead and green sea turtles; recovery plans, 36301

Fishery conservation and management:

Groundfish, crab, and halibut fisheries of Bering Sea, Aleutian Islands, and Gulf of Alaska; limited access, 36302

Permits:

Marine mammals, 36303

National Transportation Safety Board**NOTICES**

Meetings; Sunshine Act, 36386-36456

National Women's Business Council**NOTICES**

Meetings, 36336

(2 documents)

Nuclear Regulatory Commission**NOTICES**

Meetings:

Reactor Safeguards Advisory Committee, 36364

Meetings; Sunshine Act, 36386-36456

Operating licenses, amendments; no significant hazards considerations; biweekly notices, 36337

Regulatory guides; issuance, availability, and withdrawal, 36365

Applications, hearings, determinations, etc.:

Tennessee Valley Authority, 36366

Washington Public Power Supply System, 36367

Personnel Management Office**NOTICES**

Administrative Careers With America (ACWA)

examination procedures; announcement, 36367

Presidential Documents**ADMINISTRATIVE ORDERS**

Marine war risk insurance coverage (Memorandum of August 29, 1990), 36257

Public Health Service

See Alcohol, Drug Abuse, and Mental Health

Administration; Food and Drug Administration; Health Resources and Services Administration; National Institutes of Health

Research and Special Programs Administration**NOTICES**

Hazardous materials:

Inconsistency rulings, etc.—

New York City, NY, 36380

Securities and Exchange Commission**NOTICES**

Self-regulatory organizations; proposed rule changes:

Chicago Board Options Exchange, Inc., 36369

National Association of Securities Dealers, Inc., 36371, 36372

(3 documents)

Pacific Stock Exchange, Inc., 36375

Philadelphia Stock Exchange, Inc., 36375, 36377

(2 documents)

Self-regulatory organizations; unlisted trading privileges:

Cincinnati Stock Exchange, Inc., 36369

Applications, hearings, determinations, etc.:

American Hi-Tech Corp., 36378

Colonial Advanced Strategies Gold Trust et al., 36378

Richmond Capital Trust, 36379

Southeastern Power Administration**NOTICES**

Power rates:

Georgia-Alabama System of Projects, 36306

State Department**NOTICES**

Meetings:

Fine Arts Committee, 36380

International Telegraph and Telephone Consultative Committee, 36380

Technology Administration**NOTICES**

Meetings:

Intelligent manufacturing systems international research and development program; workshop, 36304

Transportation Department

See Coast Guard; Federal Aviation Administration; Federal Highway Administration; Research and Special Programs Administration

Treasury Department

See also Internal Revenue Service

NOTICES

Agency information collection activities under OMB review 36384

Notes, Treasury:

AD-1992 series, 36381

M-1995 series, 36382

United States Information Agency**NOTICES**

Meetings:

Book and Library Advisory Committee, 36384

Veterans Affairs Department**NOTICES**

Agency information collection activities under OMB review,
36384, 36385
(2 documents)

Separate Parts In This Issue**Part II**

Environmental Protection Agency, 36458

Part III

Department of Health and Human Services, Food and Drug
Administration, 36578

Part IV

Department of Transportation, Federal Aviation
Administration, 36592

Reader Aids

Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR**Administrative Orders:****Memorandums:**

August 29, 1990..... 36257

8 CFR

212..... 36259

12 CFR**Proposed Rules:**

225..... 36282

14 CFR

21..... 36259

23..... 36259

39 (5 documents)..... 36264-
36270

Proposed Rules:

39..... 36284

91..... 36592

15 CFR

776..... 36271

21 CFR**Proposed Rules:**

197..... 36289

882..... 36578

23 CFR**Proposed Rules:**

635..... 36289

25 CFR

286..... 36272

26 CFR

1..... 36274

Proposed Rules:

1..... 36290

33 CFR

165..... 36278

40 CFR**Proposed Rules:**

51..... 36458

52 (2 documents)..... 36290,
36458

81..... 36290

171..... 36297

44 CFR

64..... 36278

47 CFR

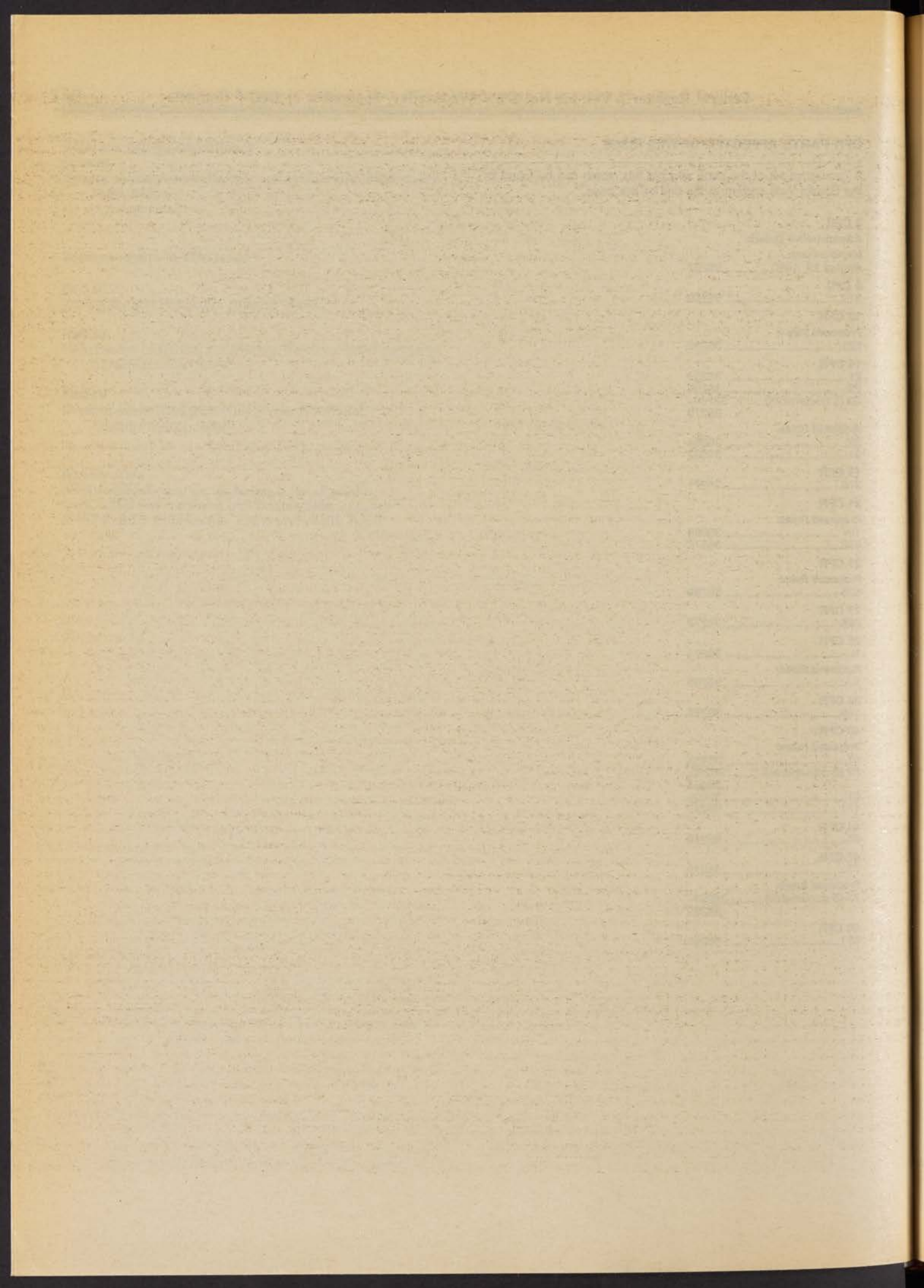
73..... 36279

Proposed Rules:

73 (5 documents)..... 36297-
36299

50 CFR

661..... 36280



Federal Register

Vol. 55, No. 172

Wednesday, September 5, 1990

Presidential Documents

Title 3—

The President

Memorandum of August 29, 1990

Provision of Marine War Risk Insurance Coverage

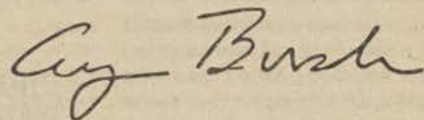
Memorandum for the Secretary of State and the Secretary of Transportation

By virtue of the authority vested in me by the Constitution and laws of the United States, including 3 U.S.C. 301 and section 1202 of the Merchant Marine Act, 1936, as amended (Act), 46 U.S.C. App. 1282, I hereby:

approve the provision by the Secretary of Transportation of insurance or reinsurance of vessels (including cargoes and crew) entering the Middle East region against loss or damage by war risks in the manner and to the extent provided in Title XII of the Act, 46 U.S.C. App. 1281, *et seq.*, for purposes of responding to the current crisis in the Middle East, whenever, after consultation with the Department of State, it appears to the Secretary of Transportation that such insurance adequate for the needs of the waterborne commerce of the United States cannot be obtained on reasonable terms and conditions from companies authorized to do an insurance business in a State of the United States. This approval is effective for sixty days. I hereby delegate to the Secretary of Transportation, in consultation with the Secretary of State and the Director of Office of Management and Budget, the authority vested in me by section 1202 of the Act, to approve the provision of insurance or reinsurance for these purposes after the expiration of the sixty days.

The Secretary of Transportation is directed to bring this approval to the immediate attention of all operators and to arrange for its publication in the Federal Register.

THE WHITE HOUSE,
Washington, August 29, 1990.



[FR Doc. 90-20966

Filed 8-31-90; 12:29 pm]

Billing code 3195-01-M

Rules and Regulations

Federal Register

Vol. 55, No. 172

Wednesday, September 5, 1990

This section of the **FEDERAL REGISTER** contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510. The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first **FEDERAL REGISTER** issue of each week.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 212

[INS No. 1280-80]

Guam Visa Waiver Program; Republic of Korea

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule adds the Republic of Korea to the Guam Visa Waiver Program, implemented under Public Law 99-396. This rule will facilitate the travel of the citizens of the Republic of Korea to visit Guam for up to fifteen days without first obtaining nonimmigrant visitor visas at American consulates abroad.

EFFECTIVE DATE: October 1, 1990.

FOR FURTHER INFORMATION CONTACT:

Yanghe Peggy Wong, Assistant Chief Inspector, Immigration & Naturalization Service, 425 I Street, NW., Washington, DC, Telephone: (202) 514-4033.

SUPPLEMENTARY INFORMATION: Under section 14 of Public Law 99-396 (Omnibus Territories Act of 1986), certain visitors from designated countries may visit Guam for up to fifteen days without visas. The Guam Visa Waiver Program enables visitors from the specified countries to enter Guam without having to obtain nonimmigrant visitor visas from American consulates outside the United States.

First implemented on October 1, 1988, this facilitation measure has resulted in the arrival on Guam of thousands of nonimmigrant visitors from Australia, Brunei, Burma, Indonesia, Japan, Malaysia, Nauru, New Zealand, Papua New Guinea, Singapore, Solomon

Islands, the United Kingdom (including citizens of the colony of Hong Kong), Vanuatu, and Western Samoa. In addition to the geographical proximity to Guam, these countries met the other three criteria for selection, including their posing no threat to the welfare, safety, or security of the United States, its territories, or commonwealths.

The Republic of Korea now meets all the eligibility criteria for inclusion in the Guam Visa Waiver Program.

An exception to 5 U.S.C. as to notice of proposed rulemaking is made since this rule provides benefits to both the economy of Guam and to certain nonimmigrants from the Republic of Korea, without adversely affecting any other group.

In accordance with 5 U.S.C. 605(b), the Commissioner certifies that this rule will not have a significant economic impact on a substantial number of small entities.

This is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have federalism implications warranting the preparation of a Federal Assessment in accordance with 12612.

List of Subjects in 8 CFR Part 212

Administrative practice and procedure, Aliens, Passports and visas.

Accordingly, part 212 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 212—DOCUMENTARY REQUIREMENTS; NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

1. The authority citation of part 212 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1225, 1226, 1228, 1252; 8 CFR part 2.

2. Section 212.1 is amended by revising paragraph (e)(3) to read as follows:

§ 212.1 Documentary requirements for nonimmigrants.

(e) ***

(3) The following countries now meet the eligibility criteria as stated in paragraph (e)(2) of this section: Australia, Brunei, Burma, Indonesia, Japan, Malaysia, Nauru, New Zealand, Papua New Guinea, Republic of Korea, Singapore, Solomon Islands, the United

Kingdom (including the citizens of the colony of Hong Kong), Vanuatu, and Western Samoa.

* * * * *

Dated: August 20, 1990.

Mary A. Ryan,

Acting Assistant Secretary of State for Consular Affairs, Department of State.

Dated: August 24, 1990.

Stella Guerra,

Assistant Secretary for Territorial and International Affairs, Department of Interior.

Dated: July 27, 1990.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 90-20763 Filed 9-4-90; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 23

[Docket No. 087CE, Special Condition 23-ACE-56]

Special Conditions; Cessna Model 441, Electronic Flight Instrument System (EFIS) Installation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are being issued for the Cessna Model 441 airplane. These airplanes will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards for normal, utility, acrobatic, and commuter category airplanes. These novel and unusual design features include the installation of electronic displays and the protection of them from high intensity radiated fields (HIRF), and from the indirect effects of lightning for which the applicable regulations do not contain adequate or appropriate airworthiness standards. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the applicable airworthiness standards.

EFFECTIVE DATE: October 5, 1990.

FOR FURTHER INFORMATION CONTACT: Victor F. Sokoloski, Aerospace Engineer,

Standards Office (ACE-110), Aircraft Certification Service, Central Region, Federal Aviation Administration, room 1544, 601 East 12th Street, Federal Office Building, Kansas City, Missouri 64106; telephone (816) 426-5688.

SUPPLEMENTARY INFORMATION

Background

On May 23, 1990, Yingling Aircraft, Inc., P.O. Box 9238, 2010 Airport Road, Wichita, KS 67277 made an application to the FAA for supplemental type certificate (STC) approval of an installation of electronic flight instrument displays in the Cessna Model 441 airplane. This airplane is a pressurized, twin-engine turboprop, of conventional metal material, with a maximum operating altitude of 35,000 feet. The installation will incorporate an electronic attitude director indicator (EADI) and an electronic horizontal situation indicator (EHSI) instead of the traditional mechanical or electromechanical displays providing similar information to the flight crew.

Type Certification Basis

The type certification basis for the Cessna Model 441 airplane is part 23 of the Federal Aviation Regulation (FAR), effective February 1, 1965, as amended by 23-1 through 23-14, except § 23.1385(c) as amended through 23-21; plus special conditions 23-74-CE-9; part 36 of the Federal Aviation Regulations, effective December 1, 1969, as amended by 36-1 through 36-6; and SFAR 27, fuel venting. Findings of equivalent level of safety were made for §§ 23.1189(a), 23.1545, and 23.1583(a).

Discussion

Special conditions may be issued and amended, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.101 do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane or installation. Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and will become a part of the type certification basis, as provided by § 21.17(a)(2).

The proposed type design of the Collins EFIS-84 installation in the Cessna Model 441 airplane contains a number of novel and unusual design features not envisaged by the applicable airworthiness standards. Special conditions are considered necessary because the applicable airworthiness standards do not contain adequate or

appropriate safety standards for the novel or unusual design features of the Collins EFIS-84 installation in the Cessna Model 441 airplane.

These final special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the applicable airworthiness standards. They will also be applicable to all Cessna Model 441 airplanes for installation of similar EFIS (not limited to the same manufacturer) without further amendment of these special conditions.

Electronic Flight Instrument System (EFIS)

The proposed cathode-ray tube (CRT) electronic display units will contain primary attitude, heading, and navigation cockpit displays. The cockpit instrument panel configuration would feature two displays, an EADI and an EHSI on the pilot side of the instrument panel. All other displays, i.e., airspeed, altitude, vertical speed, etc., will be conventional electromechanical instruments.

Emissive color on a CRT display will inevitably appear different than reflective colors on conventional electromechanical displays. Different intensities and color temperatures of ambient illumination will also effect the perceived colors. Therefore, display legibility must be adequate for all cockpit lighting conditions, including direct sunlight.

Features of this system are novel and unusual relative to the applicable airworthiness requirements. Current small airplane airworthiness requirements are based on "single-fault" or "fail-safe" concepts and, when promulgated, the FAA did not envision use of complex, critical systems in small airplanes. The current small airplane requirements envisioned instruments that were single function; i.e., a failure would cause loss of only one instrument function, although several instrument functions may have been housed in a common case.

Flight instruments for the pilot are required to be grouped in front of the pilot so deviation from looking forward along the airplane flight path is minimized when the pilot shifts from viewing the flight path to viewing the flight instruments.

For instrument flight, the airplane must be equipped with the minimum flight instruments listed in the operating rules. This minimum listing of instruments includes all instruments that have been accepted as the minimum for continued safe flight and landing of the airplane. When the current

airworthiness standards of part 23 were written, only mechanical or electromechanical instruments that functioned independently for each parameter were envisioned. The requirements intended that airspeed, altitude, and magnetic compass information remain available to the pilot after total failure of the airplane's electrical power. Standby flight instruments are not required by the part 23 airworthiness standards because the FAA has long accepted that the small airplane could be flown safely by using partial panel techniques following a single instrument failure. The basic airman certification program for an instrument flight rules (IFR) rating has included requirements for the pilot to demonstrate the ability to fly the airplane safely following failure of any one of the previously cited instruments.

The potential for increased clarity in data display and the concentration of data displays in a single indicator increases the potential criticalness of failures. It is anticipated that pilots using these new instrument systems will become increasingly dependent on the use of them because of the tasks they perform for the pilot. After a period of time, where these electronic indicators are located in the primary instrument panel locations, it is anticipated that pilots will find it more difficult to transition to back-up or secondary indicators when failure occurs, such as reverting to use of needle-ball and airspeed for airplane attitude control when the artificial horizon instrument system fails.

The electronic indicators are expected to have significantly different modes of failure, that is, they may rapidly change from perfect performance to total failure. In contrast, the mechanical and electromechanical indicators typically deteriorated in performance over a period of time such that they were replaced before a total failure.

The electronic instrument systems can readily provide digital indication of exact numbers, moving pointer on a scale, and various other formats and combinations of them all. The FAA is concerned that pilots be provided adequate sensory cues as to whether numbers displayed are increasing or decreasing and how fast they are changing. Also, the digital indication may not show the normal operating range cues to direction or rate of change or operational limits.

These final special conditions will provide appropriate requirements for installation of electronic displays featuring design characteristics where a single malfunction or failure could affect

more than one primary instrument, display, or system. These final special conditions will also provide requirements to assure adequate reliability of system design functions that are determined to be essential for continued safe flight and landing of the airplane. For installations where electronic displays take the place of traditional instruments, the reliability must not be less than that of the electromechanical instruments acting together as a group.

Electronic indicator systems will have great potential for inhibiting information to maximize the effect of other information in various phases of flight. Attitude, airspeed, and altitude are information that the FAA has concluded must be displayed during all normal modes of operation and, therefore, may not be inhibited. Information that is considered essential to continued safe flight and landing must remain available on indicators usable by the pilot after any single failure or combination of probable failures without need for immediate crew action.

These special conditions will also require a detailed examination of each item of equipment/component of the electronic display system, and installation of the system, to determine if the airplane is dependent upon its function for continued safe flight and landing or if its failure would significantly reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions. Each component of the installation identified by such an examination as being critical to the safe operation of the airplane would be required to meet these special conditions.

The existing § 23.1309, which was incorporated into part 23 by amendment 23-14, dated December 20, 1973, has been used as a means of evaluating systems for those airplanes that include § 23.1309 in their type certification basis. The "no-single-fault" or "fail-safe" concept of § 23.1309, along with experience based on service-proven designs and good engineering judgment, have been used to successfully evaluate most airplane systems and equipment. The type certification basis for this airplane includes § 23.1309; however, the "single fault" concept does not provide an adequate means for determining and evaluating the effect of certain failure conditions that may exist in complex systems such as an EFIS installation. Therefore, the FAA considers it necessary to include the additional system analysis requirements in the certification basis. This will also allow the use of the "rational method"

of safety analysis of the systems to ensure a level of safety intended in the applicable requirements.

The development of rational methods for safety assessment of systems is based on the premise that an inverse relationship exists between the probability of a failure condition and its effect on the airplane. That is, the more serious the effect, the lower the probability must be that the related failure condition will occur. Rational methods for showing compliance for a safety assessment of systems may be shown by the use of numerical analysis, but it is not mandatory. In many cases, adequate data is not available for preparing a stand-alone numerical analysis for showing compliance. Therefore, in small airplane certification, a rational analysis, based on identification of failure modes and their consequences, is frequently a more acceptable method of showing compliance with the various required levels of system reliability than a numerical analysis alone.

If it is determined that the airplane includes systems that perform critical functions, it will be necessary to show that those systems meet more stringent requirements. These systems would be required to establish either that there will be no failures of that system or that a failure is extremely improbable. Critical functions means those functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane. These special conditions provide reliability requirements that are based on the system's critical function and provide the standards needed for certification of complex critical systems being proposed for installation.

These special conditions also require that the occurrence of system(s) failures that would significantly reduce the airplane's capability or the ability of the crew to cope with adverse operating conditions, and thereby be potentially catastrophic, be improbable. It is recognized that any system(s) failure will reduce the airplane's or crew's capability by some degree, but that reduction may not be of the degree leading to potentially catastrophic results.

Protection of Systems From High Intensity Radiated Fields (HIRF)

Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform functions required for continued safe flight and landing. Due to the use of solid state components and digital

electronics, these advanced systems are readily responsive to the transient effects of induced electrical current and voltage caused by the high intensity radiated fields (HIRF) incident on the external surface of aircraft. These induced transient currents and voltages can degrade electronic systems performance by damaging components or upsetting system functions.

Furthermore, the electromagnetic environment has undergone a transformation that was not envisioned when the current requirements were developed. Higher energy levels are radiated from transmitters that are used for radar, radio, and television. Also, the population of transmitters has increased significantly.

At present, aircraft certification requirements, as well as the industry standards for protection from the adverse effects of HIRF, are inadequate in view of the aforementioned technological advances. In addition, some incidents and accidents have been reported involving military aircraft equipped with advanced electronic systems exposed to electromagnetic radiation.

The combined effect of the technological advances in airplane design and the changing environment has resulted in an increased level of vulnerability of electrical and electronic systems required for the continued safe flight and landing of the airplane. Effective measures against the effects of exposure to high intensity radiated fields (HIRF) must be provided by the design and installation of these systems. The primary factors that have contributed to this increased concern are:

- (1) The increasing use of sensitive electronics that perform critical functions;
- (2) The reduced electromagnetic shielding afforded airplane systems by advanced technology airframe materials;
- (3) The adverse service experience of military airplanes that use these technologies; and
- (4) The increase in the number and power of radio frequency emitters and expected future increases.

Cognizant of the need for airplane certification standards to cope with the developments in technology and environment in 1986, the FAA initiated a high priority program to:

- (1) Determine and define the electromagnetic energy levels;
- (2) Develop and describe guidance material for design, test, and analysis; and

(3) Prescribe and promulgate new airworthiness standards.

The FAA sought and received the participation of international airworthiness authorities and industry to develop internationally recognized standards for certification.

At this time, the FAA and other airworthiness authorities have established an agreed level of HIRF environment that the airplane is expected to be exposed to in service. While the HIRF environment and test requirements are being finalized, the FAA has adopted special conditions for the certification of airplanes that employ electrical and electronic systems that perform critical functions. The accepted maximum energy levels in which civilian airplane system installations must be capable of operating safely are based on surveys and analysis of existing radio frequency emitters. These special conditions require that the airplane be evaluated under these energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels are believed to represent the worst case to which an airplane would be exposed in the operating environment.

These special conditions require qualification of systems that perform critical functions, as installed in aircraft, to the defined HIRF environment in paragraph 1 or, as an option to a fixed value using laboratory tests, in paragraph 2, as follows:

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the airplane is exposed to the HIRF environment, defined below:

FIELD STRENGTH VOLTS/METER

Frequency	Peak	Average
10-500 kHz.....	80	80
500-2000.....	80	80
2-30 MHz.....	200	200
30-100.....	33	33
100-200.....	33	33
200-400.....	150	33
400-1000.....	8.3K	2K
1-2 GHz.....	9K	1.5K
2-4.....	17K	1.2K
4-6.....	14.5K	600
6-8.....	4K	666
8-12.....	9K	2K
12-20.....	4K	509
20-40.....	4K	1K

(2) The applicant may demonstrate by a laboratory test that the electrical and electronic systems that perform critical functions withstand a peak of electromagnetic field strength of 100

volts per meter (v/m) in a frequency range of 10kHz to 18GHz. When using a laboratory test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation.

In view of the revised HIRF envelope, the requirement for the fixed value test has been changed to 100 v/m from the previously used value of 200 v/m. The applicant opting for the fixed value laboratory test, in lieu of the HIRF envelope, will be subject to post certification reassessment based on the finalized rule requirements. The applicants should be cautioned that choosing 100 v/m may make it difficult, under post certification reassessment requirements, to qualify the installations without a design upgrade. If the system should not meet the post certification reassessment requirements, additional protection provisions and/or testing may be required.

A preliminary hazard analysis must be performed by the applicant, for approval by the FAA, to identify electrical and/or electronic systems that perform critical functions. The term "critical" means those functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane. The systems that perform critical functions, as identified by the hazard analysis, are candidates for the application of HIRF requirements. The primary electronic flight display and the full authority digital engine control (FADEC) systems are examples of systems that perform critical functions. A system may perform both critical and non-critical functions. The HIRF requirements only apply to critical functions.

Compliance with HIRF requirements may be demonstrated by tests, analysis, models, similarity with existing systems, or a combination thereof. Service experience alone is not acceptable since such experience in normal flight operations may not include an exposure to the HIRF environmental condition. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

The modulation should be selected as the signal most likely to disrupt the operation of the system under test. For example, flight control systems may be susceptible to a 3 Hz square wave modulation while the video signals for electronic display systems may be susceptible to a 400 Hz sinusoidal modulation. If the worst case

modulation is unknown or cannot be determined, default modulations may be used. Suggested default values are a 1 KHz sine wave with 80% depth of modulation in the frequency range from 10 KHz to 400 MHz and a 1 KHz square wave with greater than 90% depth of modulation from 400 MHz to 18 GHz. For frequencies where the unmodulated signal causes deviations from normal operation, several different modulating signals with various waveforms and frequencies should be applied.

Acceptable system performance is attained by demonstrating that the system under consideration continues to perform its intended function during and after exposure to required electromagnetic fields. Deviations from system specification may be acceptable and will need to be independently assessed for each application for approval by the FAA.

Protection of Systems from Indirect Effect of Lightning

Concern for the vulnerability of airplane electrical and electronic systems to the effects of lightning has increased substantially over the past few years. This concern is due to the use of solid-state components and digital electronics in airplane systems that are susceptible to transient effects of induced electrical current and voltage caused by either a direct lightning strike to the airplane or by the electric fields created by a nearby lightning flash. These induced transient currents and voltages can degrade electronic system performance by damaging components or upsetting system functions.

The regulations incorporated by reference include airworthiness standards for lightning protection of the structure of the airplane (§ 23.867) and lightning protection of the fuel system (§ 23.954). However, these standards do not provide the level of safety for the EFIS that is inherently provided by traditional mechanical or electromechanical displays providing similar information to the flight crew.

The advent of an advanced electrical and electronic system in airplane designs requires additional consideration be given to protect these systems from the indirect effects of lightning. Increased dependence on electronic equipment for safe operation of an airplane makes adequate protection of that equipment a primary requirement.

Advisory Circular 20-136, "Protection of Aircraft Electrical/Electronic Systems Against the Indirect Effects of Lightning" dated March 5, 1990, and Radio Technical Commission for

Aeronautics (RTCA) RTCA DO-160C, section 22 "Lightning Induced Transient Susceptibility" dated December 4, 1989, provides acceptable methods and procedures for determining compliance with these special conditions. Advisory Circular 20-136 provides guidance to verify the protection of systems installed in an aircraft, while section 22 of RTCA DO-160C, provides methods to qualify equipment prior to installation in an aircraft.

Conclusion

This action affects only certain novel and unusual design features of the Cessna Model 441 airplane. It is not a rule of general applicability and affects only those applicants who apply to the FAA for approval of these features on these airplanes.

The substance of these special conditions has been subject to the notice and public comment procedure in several prior instances (54 FR 43417, October 25, 1989), (54 FR 41955, October 13, 1989), and (53 FR 13113, April 21, 1988). Also, special conditions with similar requirements have been promulgated without public procedures because the FAA has determined that good cause existed for immediate adoption (55 FR 4986, February 13, 1990) and (55 FR 17589, April 26, 1990). For these reasons, and because a delay would significantly affect the applicant's installation of the system and the certification of the airplane, which is imminent, the FAA has determined that good cause exists for adopting these special conditions without further notice. Therefore, these special conditions are being issued without substantive change for this airplane and made effective 30 days from the date of publication.

List of Subjects in 14 CFR Parts 21 and 23

Aircraft, Air transportation, Aviation safety, and Safety.

The authority citation for these special conditions is as follows:

Authority: Sections 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g); 14 CFR 21.16 and 21.101; and 14 CFR 11.28 and 11.49

Adoption of Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the applicable Cessna Model 441 airplane that incorporates the design features discussed.

1. Electronic Flight Instrument Displays

In addition to, and instead of, the applicable airworthiness standards of part 23 and requirements to the contrary, for instruments, systems, and installations whose design incorporates electronic displays that feature design characteristics where a single malfunction or failure could affect more than one primary instrument display or system, and/or system design functions that are determined to be essential for continued safe flight and landing of the airplane, the following special conditions apply:

(a) Systems and associated components must be examined separately and in relation to other airplane systems to determine whether the airplane is dependent upon its function for continued safe flight and landing and whether its failure would significantly reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions. Each system and each component identified by this examination upon which the airplane is dependent for proper functioning to ensure continued safe flight and landing, or whose failure would significantly reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions, must be designed and examined to comply with the following requirements:

(1) It must be shown that there will be no single failure or probable combination of failures, under any foreseeable operating condition, that would prevent the continued safe flight and landing of the airplane, or it must be shown that such failures are extremely improbable.

(2) It must be shown that there will be no single failure or probable combination of failures, under any foreseeable operating condition, that would significantly reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions, or it must be shown that such failures are improbable.

(3) Warning information must be provided to alert the crew to unsafe system operating conditions and to enable them to take appropriate corrective action. Systems, controls, and associated monitoring and warning means must be designed to minimize initiation of crew action that would create additional hazards.

(4) Compliance with the requirements of these special conditions may be shown by analysis and, where necessary, by appropriate ground, flight, or simulator tests. The analysis must consider:

(i) Modes of failure, including malfunction and damages from foreseeable sources;

(ii) The probability of multiple failures, and undetected faults;

(iii) The resulting effects on the airplane and occupants, considering the state of flight and operating conditions; and

(iv) The crew warning cues, corrective action required, and the capability of detecting faults.

(5) Numerical analysis may be used to support the engineering examination.

(b) Electronic display indicators, including those incorporating more than one function, may be installed instead of mechanical or electromechanical instruments if, during normal modes of operation:

(1) The electronic display indicators:

(i) Are easily legible under all lighting conditions encountered in the cockpit, including direct sunlight;

(ii) Do not inhibit the primary display of attitude, altitude, or airspeed; and

(iii) Incorporate sensory cues for the pilot that are equivalent to those in the instrument being replaced by the electronic display units.

(2) The electronic display indicators, including their systems and installations, are designed so that one display of information essential to safety and successful completion of the flight remains available to the pilot, without need for immediate action by any crewmember for continued safe operation, after any single failure or probable combination of failures that is not shown to comply with paragraph (a)(1) of this section.

2. Protection of Electrical and Electronic Systems from High Intensity Radiated Fields (HIRF)

(a) Each system that performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these critical functions are not adversely affected when the airplane is exposed to high intensity radiated electromagnetic fields external to the airplane.

3. Protection of Electrical and Electronic Systems from Indirect Effects of Lightning

(a) Each system that performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these critical functions are not adversely affected when the airplane is exposed to lightning.

(b) Each essential function of the system must be protected to ensure that the essential function can be recovered

after the airplane has been exposed to lightning.

4. For the Purpose of these Special Conditions, the Following Definitions Apply:

(1) **Critical functions.** Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

(2) **Essential functions.** Functions whose failure would contribute to or would cause a hazardous failure condition that would significantly impact the safety of the airplane or the ability of the flight crew to cope with adverse operating conditions.

Issued in Kansas City, Missouri on August 23, 1990.

Barry D. Clements,

Manager, Small Airplane Directorate,
Aircraft Certification Service.

[FR Doc. 90-20799 Filed 9-4-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-CE-71-AD; Amdt. 39-6669]

Airworthiness Directives; Cessna Single Engine and Twin Engine Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, request for comments.

SUMMARY: This amendment revises Airworthiness Directive (AD), 87-20-03R1, applicable to certain Cessna single engine and twin engine airplanes. This action requires the same inspections, maintenance, and possible parts replacement of seat rails and seat assemblies as in the current AD, but removes optional information that is no longer applicable and clarifies the recurring inspection requirements for airplanes operated for hire. This amendment, while still preventing inadvertent seat slippage, will preclude any confusion on the actual compliance requirements in the AD.

DATES: Effective September 24, 1990. Comments for inclusion in the Rules Docket must be received on or before October 29, 1990.

ADDRESSES: Cessna Single Engine Service Information Bulletin SE83-8, dated March 11, 1983, applicable to this AD, may be obtained from the Cessna Aircraft Company, Customer Service, P.O. Box 1521, Wichita, Kansas 67201. This information may be examined at the Rules Docket at the address below. Send comments on the AD in triplicate

to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 88-CE-71-AD, room 1588, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT:

Mr. Douglas W. Haig, Aerospace Engineer, Federal Aviation Administration, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Wichita, Kansas 67209; telephone 316-946-4409.

SUPPLEMENTARY INFORMATION:

Amendment 39-5729 added AD 87-20-03, which required inspection, maintenance and possible parts replacement of seat rails and seat assemblies of certain Cessna single engine and twin engine airplanes. AD 87-20-03R1, Amendment 39-5863, clarified and corrected wording, included an additional option for temporary operation of the airplane, added additional Supplemental Type Certificates (STCs) for corrective action, and listed the names and addresses of STC holders.

The FAA has subsequently determined that the options listed for temporary operation of the airplane should not remain in the AD. These options were included to alleviate any unnecessary grounding of the affected airplanes due to a shortage of replacement parts. The FAA has determined that this situation has been resolved and replacement parts are readily available.

However, many airplanes are still using the secondary seat stops as installed in lieu of airworthy seat rails under the misconception that this is acceptable. Removal of these options will eliminate this misinterpretation. In addition, the compliance schedule for airplanes operating for hire in paragraph I(c) of AD 87-20-03R1 is being clarified.

Accordingly, AD 87-20-03R1 is being amended to remove the option references and to make minor editorial changes to paragraph I(c) to clarify the intent of this paragraph.

Since the FAA has determined that the clarifications provided in this amendment are essential for the proper correction of the unsafe condition that led to the issuance of AD 87-20-03R1, it is found that notice and public procedure hereon are impractical and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

Although this action is in the form of a final rule, which involves requirements affecting immediate flight safety and,

thus, was not preceded by notice and public procedure, comments are invited on this rule.

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered and this rule may be amended in light of the comments received. Comments that provide a factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effectiveness of the AD and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket at the address given above. A report, summarizing each FAA-public contact concerned with the substance of this AD, will be filed in the Rules Docket.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to ensure the proper correction of an unsafe condition in aircraft.

If it is determined that this regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by revising AD 87-20-03R1, Amendment 39-5863, to read as follows:

Cessna: Applies to the following model airplanes, certificated in any category.

Models	Serial numbers
150A, 150B, 150C, 150D, 150E, 150F, 150G, 150H, 150J, 150K, 150L, 150M, A150K, A150L, A150M	15059019 thru 15079405.
152, A152	All.
170, 170A, 170B	All.
172, 172A, 172B, 172C, 172D, 172E, 172F, 172G, 172H, 172I, 172K, 172L, 172M, 172N, 172P, 172Q	1800 thru 27169.
P172D	All.
R172E, R172F, R172G, R172H, R172J, R172K	P17257120 thru P17257188.
172RG	All.
175, 175A	R1722000 thru R1723454.
175B, 175C	172RG0001 thru 172RG1191.
177, 177A, 177B, 177RG	55001 thru 56777.
180, 180A	17556778 thru 17557119.
180A, 180B, 180C	All.
180D, 180E, 180F, 180G, 180H, 180J, 180K	30000 thru 32999.
182, 182A, 182B, 182C, 182D, 182E, 182F, 182G, 182H, 182J, 182K, 182L, 182M, 182N, 182P, 182Q, 182R, T182, R182, TR182	50000 thru 50911.
185, 185A, 185B, 185C, 185D, 185E, A185E, A185F	18050912 thru 18053203.
188, 188A, 188B, A188A, 188B, A188B, T188C	All.

Models	Serial numbers
190, 195, 195A, 195B	7001 thru 7999, and 16000 thru 16183.
206, U206, U206A, U206B, U206C, U206D, U206E, U206F, U206G, TU206A, TU206B, TU206C, TU206D, TU206E, TU206F, TU206G	All.
P206, P206A, P206B, P206C, P206D, TP206A, TP206B, TP206C, TP206D, P206E, TP206E	P206-0001 thru P206-0603, and P20600604 thru P20600647.
207, T207, 207A, T207A	All.
210, 210A, 210B, 210C, 210D, 210E, 210F, 210G, 210H, 210J, 210K, 210L, 210M, 210N, P210N, T210F, T210G, T210H, T210J, T210K, T210L, T210M, T210N, 210R, T210R, P210R	All.
201-5 (205), 210-5A (205A)	205-0001 thru 205-0577.
336	336-0001 thru 336-0195.
337, 337A, 337B, 337C, 337D, 337E, 337F, 337G, 337H, T337B, T337C, T337D, T337E, T337F, T337G, T337H, P337H, T337H-SP	All.
T303	All.
F150G, F150H, F150J, F150K, F150L, F150M, FA150K, FA150L, FRA150L, FRA150M	All.
FA152, F152	All.
FP172	FP172-0001 thru FP172-0003.
F172F, F172G, F172H, F172K, F172L, F172M, F172N, F172P, FR172E, FR172F, FR172G, FR172H, FR172J, FR172K	All.
F177RG	All.
F182P, F182Q	All.
FR182	All.
F337E, F337F, F337G, F337H	All.
FP337	All.

Compliance: Required as follows, unless already accomplished per AD 87-20-03R1, Amendment 39-5863.

I. For airplanes operating for hire:

(A) For airplanes having less than 1,000 hours time-in-service (TIS) on the effective date of this AD, accomplish the AD requirements prior to the accumulation of 1,100 hours TIS;

(B) For airplanes having 1,000 or more hours TIS on the effective date of this AD,

accomplish the AD requirements within the next 100 hours TIS;

(C) Following the actions of (A) or (B) above, repeat the inspection requirements of this AD at each 100 hours TIS. These inspections can be accomplished at the next scheduled inspection or the next 100 hours, whichever is later.

II. For airplanes operating under FAR Part 91 (not for hire):

(A) For airplanes having less than 1,000 hours TIS on the effective date of this AD, accomplish the AD requirements at the next annual inspection after the accumulation of 1,000 hours TIS;

(B) For airplanes having 1,000 or more hours TIS on the effective date of this AD, accomplish the AD requirements at the next annual inspection;

(C) Following the actions of (A) or (B) above, repeat the AD requirements at each annual inspection thereafter.

To assure proper engagement of the seat locking mechanism and to preclude inadvertent seat slippage, accomplish the following on each pilot and copilot seat and all associated seat rails:

Note 1.—Paragraph (a) of this AD is essentially unchanged from AD 87-20-03R1, Amendment 39-5863 and is reprinted here for the convenience of the reader.

(a) In accordance with the appropriate compliance time requirement above, accomplish the following:

(1) Measure each hole in the seat track(s) for excessive wear. When checking these holes for wear, an allowance of 0.020 inch below the edge of the normal surface is permitted for the required measurement.

(i) If the wear dimension across any hole exceeds 0.36 inch but does not exceed 0.42 inch (see Figure 1), continue to measure each hole every 100 hours TIS for excessive wear.

(ii) If the wear dimension across any hole exceeds 0.42 inch, prior to further flight, replace the seat track.

(2) Visually inspect the seat rail holes for dirt and any debris, which may preclude engagement of the seat pin(s). Prior to further flight, remove any such material.

(3) Lift up on the forward edge of each seat to eliminate all vertical play. In this position, measure the depth of engagement of each seat pin. If the engagement of any pin is less than 0.15 inch (see Figure 2), prior to further flight, replace or repair necessary components to achieve a seat pin engagement of 0.15 inch or greater. If the track is worn, this dimension is measured from the worn surface, not the manufactured surface.

BILLING CODE 4910-13-M

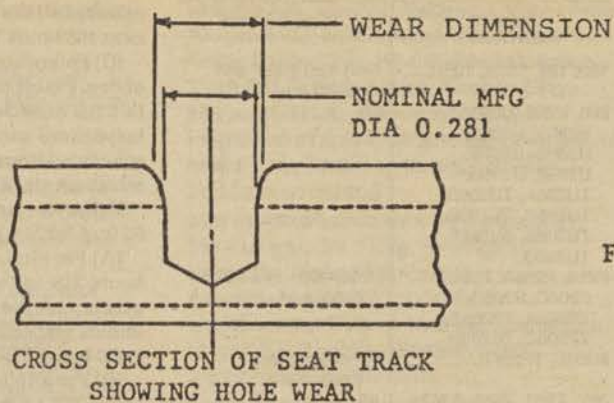


FIGURE 1

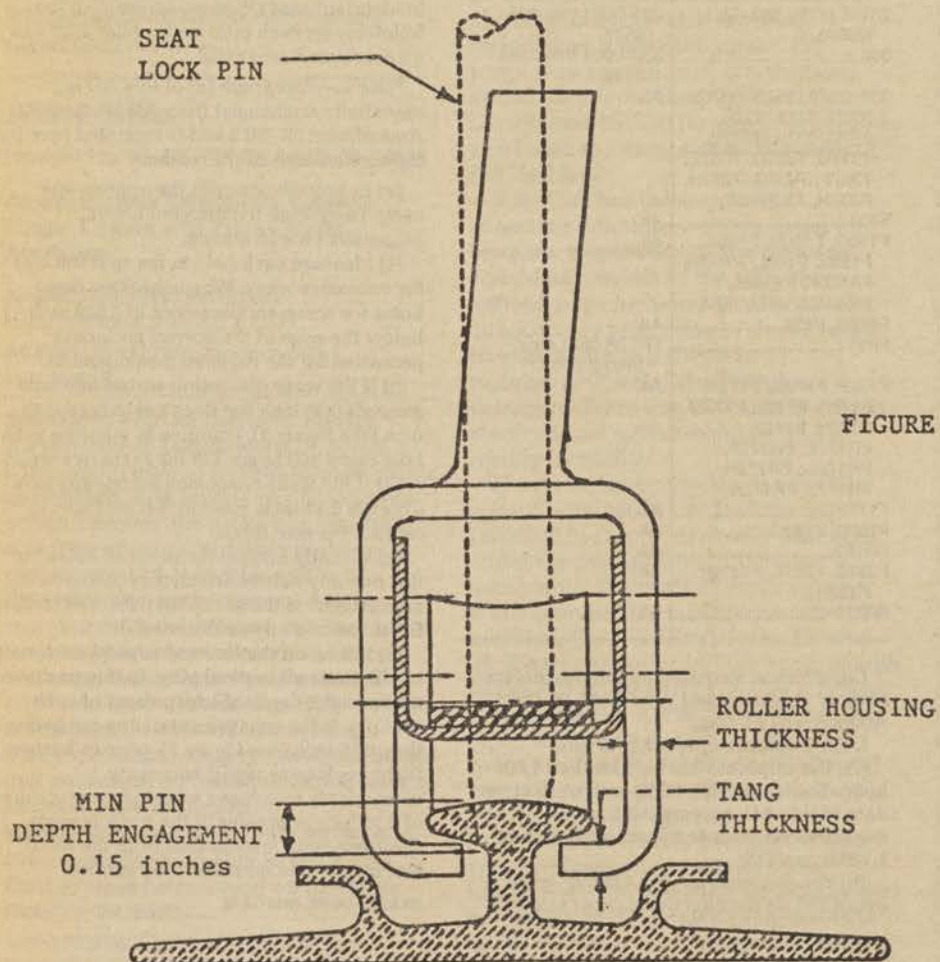


FIGURE 2

(4) Visually inspect seat rollers for flat spots. Assure all rollers and washers, which are meant to rotate, turn freely on their axle bolts (or bushings if installed). Prior to further flight, replace rollers having flat spots and any worn washers. If there is any binding between the bores of the rollers, washers, and axle bolts (or bushings if installed), prior to further flight, remove, clean, and reinstall these parts.

Note 2.—Do not lubricate rollers, washers, axle bolts or bushings as the lubricant will attract dust and other particles which can cause binding.

(5) Measure the wall thicknesses of the roller housing and the tang (see Figure 2). If the tang thickness has worn to less than $\frac{1}{2}$ the housing thickness, prior to further flight, replace the roller housing.

(6) Check the spring(s) that keep the lock pin(s) in position in the track holes for positive engagement action. Prior to further flight, replace any spring which does not provide positive engagement.

(7) Visually inspect the seat tracks for cracks in accordance with Cessna Single Engine Service Information Letter SE83-8, dated March 11, 1983. Prior to further flight, replace any seat rail exceeding the crack criteria as specified in SE83-8 with an airworthy rail.

(b) The options listed in AD 87-20-03R1, Amendment 39-5863, for the temporary operation of the airplane are no longer an acceptable means of compliance with the requirements of this AD, but may be retained if desired.

(c) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(d) Any parts replaced per this AD are exempt from the inspections required herein until such parts have attained 1,000 hours TIS.

(e) An alternate method of compliance or adjustment of the initial or repetitive compliance times, which provides an equivalent level of safety, may be approved by the Manager, Wichita Aircraft Certification Office, Federal Aviation Administration, 1801 Airport Road, room 100, Wichita, Kansas 67209.

Note 3.—The request should be forwarded through an FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

All persons affected by this directive may obtain copies of the document referred to herein upon request to the Cessna Aircraft Company, Customer Service, P.O. Box 1521, Wichita, Kansas 67201; or may examine this document at the Federal Aviation Administration, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

This amendment amends AD 87-20-03R1, Amendment 39-5863.

This amendment becomes effective on September 24, 1990.

Issued in Kansas City, Missouri, on August 27, 1990.

Barry D. Clements,
Manager, Small Airplane Directorate,
Aircraft Certification Service.

[FR Doc. 90-19997 Filed 9-4-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-CE-18-AD; Amdt. 39-6719]

Airworthiness Directives; Pilatus Aircraft, Ltd., and Fairchild-Hiller PC-6 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to certain Pilatus Aircraft Ltd., Model PC-6 Turbo Porter and Fairchild-Hiller Model PC-6 airplanes. This action requires inspections and repair or replacement, if necessary, of the welded steel rudder pedal support on these model airplanes. Reports have been received of fatigue cracks being discovered on the rudder torque tube. Repair or replacement of cracked rudder torque tubes will prevent loss of airplane directional control.

EFFECTIVE DATE: October 15, 1990.

ADDRESSES: For Pilatus built airplanes, Alert Service Bulletin (ASB) No. PC6-A-162, dated November 10, 1989, applicable to this AD, may be obtained from Pilatus Aircraft Ltd., Product Support Department, CH6370 Stans, Switzerland, and for Fairchild-Hiller built airplanes, Service Bulletin (SB) No. PC6-27-15, including Addendum 1, may be obtained from Maryland Air Industries, Inc. (MAI) (Formerly Fairchild-Hiller and Fairchild-Republic), Top Flight Airpark Route 12, Box 102, Showalter Road, Hagerstown, Maryland 21740; Telephone (301) 797-0887. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Carl Mittag, Aircraft Certification Staff, Europe Africa, and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium; Telephone 322.513.38.30, or Herman Belderok, Foreign FAR 23 Section, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 374-6932.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD

requiring initial and repetitive visual inspections of the rudder pedal support for cracks on certain Pilatus Aircraft, Ltd., and Fairchild-Hiller PC-6 Series airplanes was published in the Federal Register on June 4, 1990 (55 FR 22800). The proposal resulted from several reports the manufacturer received concerning fatigue cracks on Pilatus Aircraft, Ltd., PC-6 series airplanes equipped with welded steel rudder supports, rudder torque tube Part Number (P/N) 6232.0196.00. Airplanes with cast aluminum rudder pedal supports, torque tube P/N 116.35.06.104 are not affected.

Consequently, Pilatus Aircraft, Ltd., issued ASB No. PC6-A-162, dated November 10, 1989, and Maryland Air Industries, Inc., (formerly Fairchild-Hiller and Fairchild-Republic, which manufactured the PC-6 model airplanes under license from Pilatus) issued SB No. PC6-27-15, which specifies initial and repetitive visual inspections of the rudder pedal support for cracks using a magnifying glass. If cracks are found, the rudder pedal support must be repaired or replaced prior to further flight.

The Federal Office for Civil Aviation (FOCA), which has responsibility and authority to maintain the continuing airworthiness of these airplanes in Switzerland, classified this ASB and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes. On airplanes operated under Swiss registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of the FOCA, combined with FAA review of pertinent documentation, in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA examined the available information related to the issuance of Pilatus ASB No. PC6-A-162 and MAI SB No. PC6-27-15 and the mandatory classification of this Pilatus ASB by the FOCA, and concluded that the condition addressed by Pilatus ASB No. PC6-A-162 and MAI SB No. PC6-27-15 was an unsafe condition that may exist on other airplanes of this type certificated for operation in the United States. Accordingly, the FAA proposed an amendment to part 39 of the Federal Aviation Regulations to include an AD on this subject.

Interested parties were afforded an opportunity to comment on the proposal. No comments or objections were received on the proposal or the FAA determination of the related cost to the public. Accordingly, the proposal is adopted without change except for minor editorial corrections.

The FAA has determined that this regulation involves 26 airplanes at an approximate inspection cost of \$80 for each airplane, or a total cost of \$2,080 for each inspection of the entire fleet. The cost of compliance with the proposed AD is so small that the expense of compliance will not have a significant financial impact on any small entities operating these airplanes.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Pilatus Aircraft, Ltd., and Fairchild-Hiller:

Applies to Model PC-6 series airplanes manufactured by Pilatus Aircraft, Ltd., (Serial Number (S/N) 1 through 824), and to Model PC-6 airplanes manufactured by Fairchild-Hiller (S/N 2001 and up) (all variants) fitted with welded steel rudder pedal supports, certificated in any category.

Compliance: Required initially within the next 50 hours time-in-service (TIS) after the effective date of this AD, and thereafter at intervals of 100 hours TIS, unless already accomplished.

To preclude failure of the welded steel rudder pedal supports, accomplish the following:

(a) Visually inspect the rudder pedal support for cracks using a 10x magnifying glass in accordance with:

(1) Alert Service Bulletin No. PC6-A-162 for those airplanes built by Pilatus Aircraft, Ltd.; or

(2) Service Bulletin No. PC6-27-15 for those airplanes built by Fairchild-Hiller.

(b) If cracks are found, prior to further flight, repair or replace the rudder pedal support with a serviceable airworthy unit in accordance with the instructions contained in the appropriate Service Bulletin listed in paragraph (a) of this AD.

(c) The repetitive 100 hour TIS inspections may be discontinued upon installation of a rudder pedal support manufactured from a machine casting Pilatus Part Number 116.35.06.104.

(d) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD can be accomplished.

(e) An alternate method of compliance or adjustment of the initial or repetitive compliance times, which provides an equivalent level of safety, may be approved by the Manager, Brussels Aircraft Certification Staff, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium.

Note.—The request should be forwarded through an FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Staff.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to Pilatus Aircraft, Ltd., Product Support Department, CH6370 Stans, Switzerland, or Maryland Air Industries, Top Light Airpark, Route 12, Box 102, Showalter Road, Hagerstown, Maryland 21740; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on October 15, 1990.

Issued in Kansas City, Missouri, on August 27, 1990.

Barry D. Clements,

Manager, Small Airplane Directorate,
Aircraft Certification Service.

[FR Doc. 90-20796 Filed 9-4-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-CE-03-AD; Amdt. 39-6718]

Airworthiness Directive; Piper Model PA-38-112 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to Piper Model PA-38-112 airplanes, which will supersede AD 83-05-04 and requires modification of the main landing gear system. The FAA has received reports of loose or bent main landing gear attachment bolts. The actions specified in this AD will preclude such landing gear failures.

EFFECTIVE DATE: October 15, 1990.

ADDRESSES: Piper Service Bulletin (SB) 673B, dated October 2, 1986, applicable to this AD may be obtained from the Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 32960; telephone (407) 567-4361, or may be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Charles L. Perry, Aerospace Engineer, Airframe Branch, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia 30349, telephone (404) 991-2910.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD requiring modification of the main landing gear system on all Piper Model PA-38-112 airplanes was published in the Federal Register on February 28, 1990 (55 FR 7005). The proposal was prompted by reports of loose or bent main landing gear attachment bolts.

The FAA has previously issued ADs to address this problem, including AD 80-11-09, Amendment 39-3779 (45 FR 35308); and AD 83-05-04, Amendment 39-4581 (48 FR 9516). Subsequent to these ADs, Piper issued SB 673A, which recommended replacement of all bolts on the landing gear. Neither of these actions reduced the occurrences of landing gear bolt failures.

Piper has since issued SB 673B, which specifies a modification of the main landing gear system on Piper Model PA-38-112 airplanes. The FAA proposed an AD that would require this modification in accordance with Piper SB 673B to prevent possible landing gear failures. The modification involves the replacement of existing bolts with the applicable Piper Main Landing Gear Bolt

Replacement Kit, either 765-171V or 765-172V on Piper Model PA-38-112 airplanes.

Interested parties were given an opportunity to comment on the proposal. The one party who responded cited a need for continued repetitive inspections of the main undercarriage leg outboard attachment bolts P/N 401462 and the inboard attachment bolt P/N 401511 (AN7-17A), and explained that the failure of the inboard attachment bolt appears to be a secondary failure resulting from the failure of the main undercarriage leg outboard attachment bolt. The commenter reported the case of a single inboard bolt failure in fatigue.

The FAA has evaluated this comment and determined that this AD should not address the inboard attachment bolt at this time. The outboard bolt which is involved in this action, has been changed to a larger diameter bolt of increased strength and fracture toughness (from NAS145-22 bolt to AN6H-14A bolt). Also, no failures have been reported on airplanes that have been modified in accordance with Piper SB 673B. The FAA regards the installation of the new outboard bolt as a solution to the problem and the proposal is not being changed in light of the comment.

The FAA will conduct further evaluations and continue to monitor the service history of the inboard bolt to determine if there is a need for future AD action in this area. No comments were received in the cost-determination. Accordingly, the proposal is adopted with only minor editorial changes.

The FAA has determined that this regulation involves approximately 2,500 airplanes at an approximate one-time cost of \$100 for each airplane, or a total one-time fleet cost of \$250,000. The cost of complying with the proposal is so small that it will not have a significant financial impact on any small entities owning or operating the affected airplanes.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February

26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 1606(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding AD 83-05-04, Amendment 39-4581, with the following new AD:

Piper: Applies to Model PA-38-112 (all serial numbers) airplanes certificated in any category.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished. To preclude loosening of the landing gear attachments and possible gear separation, accomplish the following:

(a) Modify the main landing gear system in accordance with Piper Service Bulletin 673B, dated October 2, 1986.

(b) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(c) An alternate method of compliance or adjustment of the compliance time, which provides an equivalent level of safety, may be approved by the Manager, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia 30349.

Note.—The request should be forwarded through an FAA Maintenance Inspector, who may add comments and send it to the Manager, Atlanta Aircraft Certification Office.

All persons affected by this directive may obtain copies of the document referred to herein upon request to the Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 32960, telephone (407) 567-4361; or may examine this document at the FAA, Central Region, Office of the Assistant

Chief Counsel, room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This Amendment supersedes AD 83-05-04, Amendment 39-4581.

This amendment becomes effective on October 15, 1990.

Issued in Kansas City, Missouri, on August 27, 1990.

Barry D. Clements,

Manager, Small Airplane Directorate,
Aircraft Certification Service.

[FR Doc. 90-20797 Filed 9-4-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-ASW-29; Amdt. 39-6717]

Airworthiness Directives; Schweizer Aircraft Corporation (Hughes Helicopters Inc.) Model 269C Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action published in the Federal Register and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of Schweizer Aircraft Corporation (Hughes Helicopters Inc.) Model 269C series helicopters by individual priority letters. The AD requires an inspection of the lower longitudinal cyclic control rod assembly to verify the proper location of the rod spring attachment clamp and position of the spring attachment angles and also requires the installation of a new worm type hose clamp on the control rod. The AD is needed to prevent loss of longitudinal cyclic control of the helicopter.

DATES: Effective October 3, 1990, as to all persons except those persons to whom it was made immediately effective by Priority Letter AD 90-09-07, issued April 24, 1990, which contained this amendment.

ADDRESSES: The applicable service information may be obtained from: Schweizer Aircraft Corporation, P.O. Box 147, Elmira, New York 14902, or may be examined in the Regional Rules Docket, Office of the Assistant Chief Counsel, FAA, Southwest Region, 4400 Blue Mound Road, Building 3B, room 158, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Socias, Aerospace Engineer, FAA, New York Aircraft Certification Office, Airframe Branch, ANE-172, New England Region, 181 South Franklin Avenue, Valley Stream,

New York 11581; telephone (516) 791-6220.

SUPPLEMENTARY INFORMATION: On April 24, 1990, Priority Letter AD 90-09-07 was issued and made effective immediately as to all known U.S. owners and operators of Schweizer Aircraft Corporation (Hughes Helicopters Inc.) Model 269C series helicopters. The AD requires a special inspection of the lower longitudinal cyclic control rod assembly to verify the proper location of the rod spring attachment clamp and the position of the spring attachment angles. The AD also requires the installation of a new worm type hose clamp on the control rod, forward of and touching the rod spring attachment clamp. The installation of this new worm type hose clamp will insure that the rod spring attachment clamp will not move forward if it becomes loose. This condition, if not corrected, could result in possible loss of longitudinal cyclic control and subsequent loss of the helicopter. The inspection and repair procedures required by Priority Letter AD 90-09-07 were derived from Schweizer Service Bulletin No. B237, dated April 5, 1990.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impractical and contrary to public interest, and good cause existed to make the AD effective immediately by individual priority letter issued April 24, 1990, to all known U.S. owners and operators of certain Schweizer model helicopters. These conditions still exist and the AD is hereby published in the Federal Register as an amendment to § 39.13 of part 39 of the FAR to make it effective as to all persons.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of governments. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implication to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is

determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Schweizer Aircraft Corporation (Hughes Helicopter, Inc.): Applies to Model 269C series helicopters, serial number (S/N) 0004 through 1456, certificated in any category. (Docket Number 90-ASW-29)

Compliance is required prior to further flight after the effective date of this AD, unless already accomplished.

To prevent possible loss of longitudinal cyclic control and subsequent loss of the helicopter, accomplish the following:

(a) Inspect the lower longitudinal cyclic control rod assembly, part number (P/N) 2699940-7, to verify the proper location of the rod spring attachment clamp, P/N AN735-9, and position of the spring attach angles as follows:

(1) Gain access to the lower longitudinal cyclic control rod assembly.

(2) Position the cyclic stick to the full forward position. Verify that the stud in the friction linkage is completely forward in the friction link slot. If not, see paragraph (b).

(3) On the lower longitudinal cyclic control rod assembly, measure the distance between the aft face of the forward jam nut and the forward edge of the clamp, P/N AN735-9. The distance should be between 7.85 and 7.97 inches. If not, see paragraph (b).

(4) Verify that the horizontal legs of the angles attached to the clamp, P/N AN735-9, are parallel to the control rod and aligned with each other. If not, see paragraph (b). If correct, prevent movement of the parts, and torque the clamp nut to 20-25 in-lb.

(b) Adjust the clamp and the attached angles, if necessary, by disconnecting the springs and loosening the screw and nut holding the angles and clamp, P/N AN735-9,

together. Set a distance of 7.85 to 7.97 inches between the aft face of the rod forward jam nut and the forward edge of the clamp, P/N AN735-9. Position the horizontal legs of the angles attached to the clamp, P/N AN735-9, parallel to the control rod, and align with each other. Prevent movement of the parts, and torque the nut to 20-25 in-lb. Determine that the clamp is secure. Reconnect the springs to the angles.

(c) Install the new worm type hose clamp, P/N AN737TW22 or AN737TW24, on the control rod, forward of and touching the clamp, P/N AN735-9. Torque the screw to a range of 40-45 in-lb. Determine that the clamp is secure.

(d) Aircraft may be ferried in accordance with the provisions of FAR §§ 21.197 and 21.199 to a base where the requirements of the AD can be accomplished, provided cyclic control displacement is not reduced.

(e) Alternate inspections, modification, or other actions which provide an equivalent level of safety may be used when approved by the Manager, New York Aircraft Certification Office, FAA, 181 South Franklin Avenue, room 202, Valley Stream, New York.

Note.—Schweizer Service Bulletin No. B237 pertains to the requirements of this AD.

This amendment becomes effective October 3, 1990, as to all persons except those persons to whom it was made immediately effective by Priority Letter AD 90-09-07, issued April 24, 1990, which contained this amendment.

Issued in Fort Worth, Texas, on August 24, 1990.

James D. Erickson,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 90-20795 Filed 9-4-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-ASW-44; Amdt. 39-6716]

Airworthiness Directives; McDonnell Douglas Helicopter Company (MDHC) Model 369 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), which supersedes an existing AD that requires repetitive inspections of the overrunning clutch assembly. The new AD requires replacement of the overrunning clutch assembly on MDHC Model 369 series helicopters equipped with a cargo hook. The AD is needed to prevent overrunning clutch failures which could result in loss of power to the main rotor which, in turn, could result in loss of control of the helicopter.

EFFECTIVE DATE: October 5, 1990.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Helicopter Company, 5000 E. McDowell Road, Attention: Publications Department, MS543/D214, Mesa, Arizona 85205, or may be examined in the Regional Rules Docket, Office of the Assistant Chief Counsel, FAA, 4400 Blue Mound, Building 3B, room 158, Ft. Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Roy McKinnon, ANM-143L, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5247.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD requiring replacement of the overrunning clutch assembly on certain MDHC Model 369 series helicopters equipped with a cargo hook was published in the *Federal Register* on April 24, 1990 (55 FR 18350). Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received. Accordingly, the proposal is adopted without change.

This amendment supersedes Amendment 39-4077 (46 FR 20534, April 6, 1981); AD 81-07-10, as amended by Amendment 39-4266 (46 FR 56776, November 19, 1981). AD 81-07-10, currently requires repetitive inspections of the overrunning clutch assembly and removal of a sprag clutch assembly at 1,800 hours' time in service. Since issuing the AD, the FAA has received reports of sprag element chipping and wear of the sprag, cage, and the inner and outer races of the overrunning clutch assembly on certain MDHC model helicopters equipped with a cargo hook. This action will require certain clutch assemblies to be replaced.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation involves approximately 200 helicopters of U.S. Registry. It is estimated that it will take approximately 5 manhours per helicopter at \$40 per hour, and \$2,248 per helicopter for parts, to accomplish this work. Based on these figures, the total cost impact on each

U.S. operator is estimated to be \$2,448 per helicopter, for a total fleet cost of \$489,600. Therefore, I certify that this action:

- (1) Is not a "major rule" under Executive Order 12291;
- (2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
- (3) Does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and
- (4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

McDonnell Douglas Helicopter Company (MDHC): Applies to all Model 369 series helicopters, certificated in all categories, that are equipped with a cargo hook. (Docket No. 89-ASW-44)

Compliance required as indicated, unless already accomplished.

To prevent an overrunning clutch assembly failure, which may result in the loss of engine power to the main rotor, accomplish the following:

(a) Within the next 300 hours' time in service after the effective date of this AD or at the next annual inspection, whichever occurs first, accomplish the following:

- (1) Removing overrunning clutch assembly, part number (P/N) 369A5350-BSC, -601, or -603, if installed.
- (2) Install the overrunning clutch subassembly, P/N 369A5350-41, in the clutch assembly, P/N 369A5350-BSC, -601, or -603, whichever is installed, or replace clutch assemblies with P/N 369A5350-605.

Note: Clutch subassembly, P/N 369A5350-31, can be converted to P/N 369A5350-41, in accordance with MDHC Service Information Notice (SIN) No. DN-164, En-54, and FN-44, dated October 27, 1989. Clutch assemblies, P/N 369A5350-BSC, -601, or -603, can be reidentified as a -605 clutch assembly after

installation of clutch subassembly, P/N 369A5350-41.

(b) Inspect the overrunning clutch assembly, P/N 369A5350-605 or P/N 369A5350-BSC, -601, or -603 with P/N 369A5350-41 subassembly, at intervals not to exceed 300 hours' time in service or at annual inspections, whichever occurs first, for condition of the race inner clutch, P/N 369A5353-3, the race outer clutch, P/N 369A5352, and the sprag assembly, P/N 369D25351.

(c) Replace sprag assemblies, P/N 369D25351 and P/N 369A5364, with an airworthy part on or before attaining 1,800 hours' total time in service.

Note: The Manufacturer's Handbook of Maintenance Instruction and the Component Overhaul Manual pertain to the removal, identification, and installation of these assemblies.

(d) Special flight permits may be issued in accordance with FAR §§ 21.197 and 21.199 to operate helicopters to a base for the accomplishment of inspections required by this AD.

(e) Alternative inspections, modifications, or other actions which provide an equivalent level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, ANM-100L, FAA, Northwest Mountain Region, 3229 East Spring Street, Long Beach, California 90806-2425.

(f) For the purpose of establishing the "time in service" specified in this AD, either the clutch total time with hook attached may be used, or a separate and permanent log of external load operating time (take-off to landing on a flight which involves external load operations) may be used; this log must meet the requirements of FAR § 91.173.

This amendment supersedes AD 81-07-10, Amendment 39-4077, as amended by Amendment 39-4266.

This amendment becomes effective October 5, 1990.

Issued in Fort Worth, Texas, on August 24, 1990.

Henry A. Armstrong,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 90-20798 Filed 9-4-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 776

[Docket No. 900802-0202]

Horses for Export by Sea; Certification by Exporter

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to instruct exporters of horses by sea to

use the Additional Information section on the Application for Export License (Item 15, Form BXA-622P) to certify that no horse is being exported for the purpose of slaughter. Previously, exporters were required to provide this information in a separate statement attached to their export application.

The export of horses by sea to any destination, regardless of the dollar value of the shipment, requires an individual validated license issued by the Department of Commerce. Sea transport poses numerous health risks to the animals and, therefore, sufficient reason for this uncommon means of transport, as well as full disclosure of the intended end-use, is mandatory before a license will be issued. A license will not be granted if it is determined that the horses are being exported for the purpose of slaughter.

EFFECTIVE DATE: This rule is effective September 5, 1990.

FOR FURTHER INFORMATION CONTACT: Sharon Gongwer, Regulations Branch, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 377-4819.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12861.

2. This rule involves collections of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control numbers 0694-0005 and 0694-0042. As a result of this rule, control number 0694-0042 will be discontinued.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)), no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. Section 13(a) of the Export Administration Act of 1979 (EAA), as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an

opportunity for public comment, and a delay in effective date. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Accordingly, it is being issued in final form. However, comments from the public are always welcome. Comments should be submitted to Karen Spencer, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Part 776

Exports, Reporting and recordkeeping requirements.

Accordingly, part 776 of the Export Administration Regulations (15 CFR parts 768-799) is amended as follows:

PART 776—[AMENDED]

1. The authority citation for 15 CFR part 776 continues to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981, by Pub. L. 100-418 of August 23, 1988; and by Pub. L. 99-64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

2. Section 776.3 is revised to read as follows:

§ 776.3 Horses for export by sea.

An application for a license to export horses by sea may not cover more than one consignment. In addition to the documentation required by part 775, a statement from the applicant certifying that no horse under consignment is being exported for the purpose of slaughter must be placed in the Additional Information section (item 15) of the Application for Export License (BXA Form-622P). The license will be granted only if the Department of Commerce, in consultation with the Department of Agriculture, determines that the horses are not intended for slaughter.

Dated: August 29, 1990.

Michael P. Galvin,
Assistant Secretary for Export
Administration.

[FR Doc. 90-20757 Filed 9-4-90; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 286

RIN 1076 AA55

Indian Business Development Program

August 20, 1990.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: The Indian Financing Act Amendments of 1984 amended sections 402(a), 403, and 501 of the Indian Financing Act of 1974 by increasing the grant amounts for Indian tribes and Indian individuals, by authorizing appropriations not to exceed \$10,000,000 for fiscal year 1986 and each fiscal year thereafter, and by providing that competent management and technical assistance is available prior to the making of a grant. These grants are for the purpose of assisting Indian reservation economic development.

Accordingly, 25 CFR part 286 is amended to implement the Indian Financing Act Amendments of 1984, and the original Act, which has been without authority for appropriations since fiscal year 1979.

EFFECTIVE DATES: October 5, 1990.

FOR FURTHER INFORMATION CONTACT: Richard K. Nephew, Division of Financial Assistance, Bureau of Indian Affairs, telephone (202) 343-3660.

SUPPLEMENTARY INFORMATION: These amendments are published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8. Proposed amendments were published June 26, 1989, for public comment. Three comments were received, one to the effect that grants should be increased to \$500,000 dollars, another asking that \$50 million be authorized for appropriation, and the last suggesting that Indians who are not members of federally recognized tribes be eligible for grants. None of these comments can be implemented because they contravene applicable Congressional legislation.

Subsequent review of these proposed regulations within the Department identified new terminology introduced by the 1987 amendments to the Alaska Native Claims Settlement Act (ANCSA). This new terminology has led to modification of our definitions of "Indian" and "Tribe." The definition of "Indian" has been expanded to clarify that it includes anyone of Alaska Native descent who is a shareholder in an

Alaska Native corporation. The definition of "Tribe" has been expanded to include "group corporations" and "urban corporations" which are recognized by the 1987 ANCSA amendments.

The Indian Business Development Program (IBDP), regulated by part 286, supplants the Special Grants for Economic Development Program which operated in fiscal year 1983, 1984, and 1985 under authority of the Snyder Act of 1921 (25 U.S.C. 13). The IBDP, after its reauthorization in 1984, has required a matching amount from grant recipients equal to at least 75 percent of total project costs. The rule as it has been published requires a matching share of at least 60 percent from other sources. The Bureau has required as a policy matter that the matching share be at least 75 percent, and that policy will continue under this rule. The rule will be corrected in the near future to correct this continuing policy. The public will receive notice of this amendment.

It is estimated the program regulated by this part will have no more than a \$50 million gross annual effect on the national economy. It is then, by definition at 318 DM 5, not a major action. Since this document does not constitute a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969, no environmental assessments were made.

The Department of the Interior has determined that this document is not a major action under E.O. 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The collections of information contained in this rule have been approved by the Office of Management and Budget as required by 44 U.S.C. 3501 *et seq.* The clearance number assigned is 1076-0093.

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer, Bureau of Indian Affairs, Mailstop 337-SIB, 18th & C Streets, NW., Washington, DC 20240; and the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

The primary author of this document is Richard K. Nephew, Division of Financial Assistance, Bureau of Indian Affairs, telephone (202) 343-3657.

List of Subjects in 25 CFR Part 286

Grant programs-business, Grant programs-Indians, Indians-business and finance, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, part 286 of title 25, chapter I of the Code of Federal Regulations is amended as set forth below.

PART 286—[AMENDED]

1. The authority citation for part 286 is revised to read as follows:

Authority: 25 U.S.C. 1524.

2. Whatever the title "Commissioner" appears in this part, it shall be changed to "Assistant Secretary."

3. Section 286.1 is revised to read as follows:

§ 286.1 Definitions.

As used in this part 286:

Area Director means the Bureau of Indian Affairs official in charge of an area office or his authorized representative.

Assistant Secretary means the Assistant Secretary—Indian Affairs of the United States Department of the Interior or the official in the Bureau of Indian Affairs to whom the Assistant Secretary has delegated authority to act on behalf of the Assistant Secretary.

Cooperative Association means an association of individuals organized pursuant to state, Federal, or tribal law, for the purpose of owning and operating an economic enterprise for profit with profits distributed or allocated to patrons who are members of the organization.

Corporation means an entity organized pursuant to state, Federal, or tribal law, with or without stock, for the purpose of owning and operating an economic enterprise.

Economic enterprise means any Indian-owned, commercial, industrial, agricultural, or business activity established or organized for the purpose of profit, provided that eligible Indian ownership constitutes not less than 51 per centum of the enterprise.

Grantee(s) means the recipient(s) of a nonreimbursable grant under this part.

Indian means a person who is a member of an Indian tribe or a person of Alaska Native descent who is a shareholder in a corporation organized under the Alaska Native Claims Settlement Act (85 Stat. 688), as amended.

Partnership means a form of business organization in which two or more legal persons are associated as co-owners for the purposes of business or professional activities for private pecuniary gain.

Profits means the net income earned after deducting operating expenses from operating revenues.

Reservation means Indian reservation, California rancharia, public domain Indian allotment, former Indian reservation in Oklahoma, and land held by Alaska Native groups incorporated under the provisions of the Alaska Native Claims Settlement Act (85 Stat. 688), as amended.

Secretary means the Secretary of the Interior.

Superintendent means the Bureau official in charge of a Bureau agency office or other local office reporting to an Area Director.

Tribe means any Indian tribe, band, nation, rancharia, pueblo, colony or community, including any Alaska Native village or any regional, village, urban or group corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) as amended, which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs.

4. A new § 286.5 is added to read as follows:

§ 286.5 Information collection.

(a) The collections of information contained in §§ 286.12 and 286.22 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1076-0093. The information will be used to rate applicants in accordance with the priority criteria listed at 25 CFR 286.8. Response to this request is required to obtain a benefit in accordance with 25 U.S.C. 1521.

(b) Public reporting for this information is estimated to average 45 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer, Bureau of Indian Affairs, Mailstop 337-SIB, 18th and C Streets, NW., Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (1076-0093), Washington, DC 20503.

5. Section 286.11(a) is revised to read as follows:

§ 286.11 Management and technical assistance.

(a) Prior to and concurrent with the making of a grant to finance an Indian economic enterprise, the Assistant Secretary—Indian Affairs will insure that competent management and technical assistance is available to the grantee in the preparation of the application for a grant and/or administration of the funds granted, consistent with the grantee's knowledge and experience and the nature and complexity of the economic enterprise being financed. The competence of the management and technical assistance provided will be determined by the local agency superintendent after consultation with the applicant concerning his business needs.

6. In § 286.17, paragraphs (a), (c), and (g) are revised and paragraph (j) is added, to read as follows:

§ 286.17 Grant limitations and requirements.

(a) Grants will be made to assist in establishing new economic enterprises, or in purchasing or expanding established ones. However, a grant may be made only when in the opinion of the Assistant Secretary the applicant is unable to obtain adequate financing from other sources. Prior to making any grant, the Assistant Secretary shall assure that, to the extent practical, the applicant's own resources have been invested in the proposed project. The applicant shall not be required to invest own resources to the extent that they are already committed to endeavors deemed by the Assistant Secretary to be essential to the welfare of the applicant. If the information in an application, which must include personal financial statements, indicates that it may be possible for the applicant to obtain financing without a grant, the Assistant Secretary will require the applicant to furnish letters from two customary lenders in the area, if available, who are making loans for similar purpose, showing whether or not they will make a loan to the applicant for the total financing needed without a grant.

(c) No grant in excess of \$250,000 may be made to an Indian tribe or in excess of \$100,000 to an Indian individual, partnership, corporation, or cooperative association.

(g) Ordinarily, not more than one grant will be made for a project. Nevertheless, in certain circumstances a

second grant may be made to applicants for a new project or expansion of the original project. An additional grant will not be approved for an economic enterprise previously funded under the provisions of Title IV of the Indian Financing Act of 1974 except for expanding a successful enterprise, provided the total of grants made shall not exceed \$250,000 to an Indian tribe and \$100,000 to an Indian individual, partnership, corporation, or cooperative association.

(j) A grantee will be required to return all or a portion of the grant if the business or enterprise for which the grant was utilized is sold within three years of the date on which the grant was disbursed to the grantee, unless the proceeds from the sale are re-invested in a new business or business expansion which will benefit the Indian reservation economy. Such sale and re-investment must have the prior approval of the local agency superintendent. The grantee shall refund the lessor of the grant amount or a pro rata portion of sales proceeds. The pro rata portion of sales proceeds shall be based on the ratio of grant amount to its corresponding matching financing. The new business or business expansion utilizing such sale proceeds must meet the same criteria for eligibility as an original grant.

Walter R. Mills,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 90-20752 Filed 9-4-90; 8:45 am]

BILLING CODE 4310-02-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8310]

RIN 1545-AL64

Consolidated Return Regulations—Coordination With Section 833

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations that add a new § 1.1502-75T(d)(5) of the consolidated return regulations. The regulations supplement the existing consolidated return regulations by providing rules relating to the removal of the tax-exempt status of organizations described in section 833 of the Internal Revenue Code (relating to certain Blue Cross or Blue Shield organizations and certain other health insurers). The rules

are needed because, as a result of the loss of tax-exempt status, such organizations are, for taxable years beginning after 1986, includible corporations under section 1504(b) of the Code. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the proposed rules section of this issue of the Federal Register.

EFFECTIVE DATE: The regulations are effective for taxable years beginning after December 31, 1986.

FOR FURTHER INFORMATION CONTACT: Jean M. Whalen at telephone 202-566-3938 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document adds new § 1.1502-75T(d)(5) to part 1 of title 26 of the Code of Federal Regulations. Section 1012 of the Tax Reform Act of 1986 ("1986 Act") denied, for taxable years beginning after December 31, 1986, tax-exempt status to certain organizations described in section 833(c) of the Internal Revenue Code ("section 833 organizations"), relating to certain Blue Cross or Blue Shield organizations and certain other health insurers. As a result, such organizations now are includible corporation under section 1504(b) of the Code. Under § 1.1502-75(d)(1), as a result of a section 833 organization becoming the new common parent of an existing consolidated group ("old group"), the old group terminates and a new affiliated group with the section 833 organization as the new common parent is created.

There is no indication that Congress intended the termination of the old group and the creation of a new affiliated group as a consequence of the denial of tax-exempt status to section 833 organizations. Therefore, on September 14, 1988, the Service announced in Notice 88-107, 1988-2 C.B. 445, that it would promulgate regulations ameliorating the harsh results that would follow from the termination of the old groups.

Explanation of Provisions

The regulations published in this document adopt a neutrality principle which is intended to preclude treating members of an old group better or worse by reason of the enactment of section 833. Thus, some of the tax consequences parallel those applicable to a reverse acquisition as described in § 1.1502-75(d)(3).

The regulations allow an affiliated group created as a result of the enactment of section 833 to elect to be treated as a continuation of the old group. For this election to apply, all old groups having the same new common parent must make the election. If, as a result of the enactment of section 833, a section 833 organization became the new common parent of an affiliated group that did not file a consolidated return before 1987, the old affiliated group is treated as an old group for purposes of this regulation. Such an affiliated group and its new section 833 organization common parent may elect to file consolidated returns and to be treated as a continuation of the old group.

The election to continue is deemed to have been made if the parent section 833 organization and all the members of all the old groups file a consolidated (or amended consolidated) return without filing a Form 1122. Alternatively, an election to file as a new group is deemed to have been made if the parent section 833 organization and all the members of all the old groups file a consolidated (or amended consolidated) return and file a Form 1122. If the latter choice is selected, a waiver is granted under section 1504(a)(3) of the Code.

Any group wishing to revoke an election either to be treated as a continuation of the old group or as a new group may do so if the election was made before September 5, 1990. In addition, an old group may make a delayed election to file a consolidated return as a continuing group or as a new group.

If an election to continue is made, the section 833 organization will become the common parent without causing a termination of any old group. If the section 833 organization is itself owned by a section 833 organization, the parent section 833 organization will become the new common parent without causing a termination of any old group. Allowing old groups to continue in existence prevents the restoration of gain or loss from deferred intercompany transactions, excess loss accounts and other consequences which follow the termination of a consolidated group.

Under the neutrality principle, application of the separate return limitation year principles of the existing consolidated return rules to carryovers from taxable years beginning before 1987 is modified by the new temporary regulations if an election to continue the old group or groups is made. Under this modification, a taxable year beginning before 1987 of a member of the old group is not treated as a separate return limitation year with respect to any

corporation that was a member of the old group for each day of that taxable year. Additional guidance may be issued regarding the general application of the separate return limitation year rules. The existing consolidated return rules with respect to carrybacks apply without modification.

The neutrality principle also applies to any life-nonlife consolidated return election under section 1504(c)(2). If the old group elects to continue in existence, the life-nonlife election will also continue. In addition, if an old group was eligible to make a life-nonlife election, it will remain eligible. If a life-nonlife election could not have been made prior to the inclusion of the section 833 organization in the affiliated group, then, for purposes of determining whether a life insurance company or other corporation is a member of a group for the 5-year base period under § 1.1502-47(d)(12), periods of affiliation before the effective date of section 833 are taken into account without excluding, under section 1504(b)(1), the section 833 organization. Thus, for example, if before January 1, 1987, a section 833 organization's only subsidiary was a life insurance company, the five-year period under sections 1503(c)(2) and 1504(c)(2) will commence as of the time the section 833 organization first owned the life insurance company and, after December 31, 1986, they may file an election under section 1504(c)(2) if the section 833 organization has the requisite five-year stock ownership. If the life insurance subsidiary has been held for less than five years, credit will be given for the years it was held.

Under section 1012(c)(3)(A)(ii) of the 1986 Act, the basis of an existing Blue Cross or Blue Shield organization (as defined in section 833(c)(2)) in its assets, including subsidiary stock, is the fair market value of the asset as of the first date on which section 833 applies to the organization. Therefore, absent a special rule, if, for example, an old group elects to continue in existence, a deemed dividend election by the group under § 1.1502-32(f)(2) would further increase the organization's basis in its subsidiary's stock to the extent the subsidiary's earnings and profits were accumulated in a consolidated return year before January 1, 1986. This would be appropriate if the Blue Cross or Blue Shield organization had a basis in its subsidiary's stock that reflected only its original cost of the stock; in that case a deemed dividend election would prevent a Blue Cross or Blue Shield organization from realizing gain on the sale of the subsidiary stock attributable to amounts accumulated in consolidated return

years before January 1, 1986, which are not reflected in the basis of the subsidiary's stock. However, because the Blue Cross or Blue Shield organization's basis in its subsidiary's stock is equal to its fair market value on January 1, 1987, the basis already reflects the subsidiary's earnings and profits accumulated before that date and should not be increased further by a deemed dividend election. New § 1.1502-75T(d)(5)(viii) provides that one consequence of filing consolidated returns after 1986 is that all distributions (whether actual or deemed) by the former common parent of an old group or by a corporation that was not a member of an old group out of earnings and profits accumulated before 1987 to the section 833 organization are deemed made out of earnings and profits accumulated in pre-affiliation years. Thus, such a distribution will result in a negative adjustment under § 1.1502-32(b)(2)(iii)(c) or (c)(2)(iii) to the section 833 organization's basis in the stock of the distributing corporation.

If an election to file as a new group is made then the consequences which follow from the termination of a consolidated group apply. In addition, the five-year period for a life-nonlife consolidated return election under section 1504(c)(2) will commence as of the time the new group came into existence.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking for the regulations will be submitted to the Administrator of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these temporary regulations is Jean M. Whalen of the Office of Assistant Chief Counsel (Corporate), Internal Revenue Service. However, other personnel from the Internal Revenue Service and the Treasury Department participated in developing the regulations, on matters of both substance and style.

List of Subjects in 26 CFR 1.1501-1 Through 1.1564-1

Income taxes, Controlled group of corporations, Consolidated returns.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

Paragraph 1. The authority citation for part 1 continues to read as follows:

Authority: 26 U.S.C. 7805; * * *
§ 1.1502-75T also issued under 26 U.S.C. 1502.

Par. 2. Section 1.1502-75T is amended by revising the heading and by adding and reserving paragraph (c) and adding new paragraph (d) to read as follows:

§ 1.1502-75T. Temporary regulations for filing consolidated returns; coordination with section 338(h)(10) and section 833 (Temporary).

* * * * *

(c) [Reserved]

(d) *When group remains in existence.*

(1)-(4) [Reserved]

(5) *Coordination with section 833—(i) Election to continue old group.* If, solely by reason of the enactment of section 833 (relating to certain Blue Cross or Blue Shield organizations and certain other health insurers), an organization to which section 833 applies (a "section 833 organization") became the new common parent of an old group on January 1, 1987, the old group may elect to continue in existence with that section 833 organization as its new common parent, provided all the old groups having the same section 833 organization as their new common parent elect to continue in existence. To revoke this election, see paragraph (d)(5)(x) of this section. To file as a new group, see paragraph (d)(5)(v) of this section.

(ii) *Old group.* For purposes of this paragraph (d)(5), an old group is a group which, for its last taxable year ending in 1986, either filed a consolidated return or was eligible to (but did not file a consolidated return).

(iii) *Manner of electing to continue—(A) Deemed election.* If all the members of all the old groups having the same section 833 organization as their new common parent are included for the first taxable year beginning after December 31, 1986, on the same consolidated (or amended consolidated) return and a Form 1122 was not filed, the old groups are deemed to have elected under paragraph (d)(5)(i) of this section to continue in existence.

(B) *Delayed election.* If a deemed election to continue in existence was not made under paragraph (d)(5)(iii)(A) of this section, all the members of all the

old groups having the same section 833 organization as their new common parent may make a delayed election under paragraph (d)(5)(i) of this section to continue in existence by:

(1) Filing an appropriate consolidated (or amended consolidated) return or returns for each taxable year beginning after December 31, 1986 (notwithstanding § 1.1502-75(a)(1)) on or before January 3, 1991, and

(2) On the top of any such return prominently affixing a statement containing the following declaration: "THIS RETURN" (or, if applicable, "AMENDED RETURN") "REFLECTS A DELAYED ELECTION TO CONTINUE UNDER § 1.1502-75T(d)(5)(iii)(B)". A delayed election to continue in existence automatically revokes a deemed election to file as a new group which was made under paragraph (d)(5)(vi) of this section.

(iv) *Effects of election to continue in existence.* If an old group or groups elect to continue in existence under paragraph (d)(5)(i) of this section, the following rules apply:

(A) *Taxable years.* Each member that filed returns other than on a calendar year basis shall close its taxable year on December 31, 1986, and change to a calendar year beginning on January 1, 1987. See section 843 and § 1.1502-76(a)(1).

(B) *Carryovers from separate return limitation years.* For purposes of applying the separate return limitation year rules to carryovers from taxable years beginning before 1987 to taxable years beginning after 1986, the following rules apply:

(1) Any taxable year beginning before 1987 of a corporation that was not a member of an old group (including a section 833 organization) will be treated as a separate return limitation year;

(2) Any taxable year beginning before 1987 of a corporation that was a member of an old group that, without regard to this section and the enactment of section 833, was a separate return limitation year will continue to be treated as a separate return limitation year;

(3) Any taxable year beginning before 1987 of a member of an old group (other than a separate return limitation year described in paragraph (d)(5)(iv)(B)(2) of this section) will not be treated as a separate return limitation year with respect to any corporation that was a member of such group for each day of that taxable year; and

(4) Any taxable year beginning before 1987 of a member of an old group will be treated as a separate return limitation year with respect to any corporation that was not a member of such group for

each day of that taxable year (e.g., a corporation that was not a member of an old group, including a section 833 organization, or a corporation that was a member of another old group).

(C) *Five-year rules for life-nonlife groups.* Any life-nonlife election under section 1504(c)(2) in effect for an old group remains in effect. Any old group which was eligible to make a life-nonlife election will remain eligible to make the election. For purposes of section 1503(c), a nonlife member is treated as ineligible under § 1.1502-47(d)(13) with respect to a life member, unless both were members of the same affiliated group (determined without regard to the exclusions in section 1504(b) (1) and (2)) for five taxable years immediately preceding the taxable year in which the loss arose. See paragraph (d)(5)(ix) of this section for a tacking rule.

(v) *Election to file as a new group.* If, solely by reason of the enactment of section 833, a section 833 organization became the new common parent of an old group on January 1, 1987, the application of the five-year prohibition of reconsolidation in section 1504(a)(3)(A) to the old group is waived and the old group together with the new section 833 organization common parent may elect to file as a new group provided that all includible corporations elect to file a consolidated (or amended consolidated) return as a new group for the first taxable year beginning after December 31, 1986. To revoke this election, see paragraph (d)(5)(x) of this section.

(vi) *Manner of electing to file as a new group—(A) Deemed election.* The old group or groups and the section 833 organization are deemed to have elected under paragraph (d)(5)(v) of this section to file as a new group by filing, for the first taxable year beginning after December 31, 1986, a Form 1122 and a consolidated (or amended consolidated) tax return.

(B) *Delayed election.* If a deemed election to file as a new group was not made pursuant to paragraph (d)(5)(vi)(A) of this section, the old group or groups and the section 833 organization may make a delayed election under paragraph (d)(5)(v) of this section to file as a new group by

(1) Filing an appropriate consolidated (or amended consolidated) return or returns for each taxable year beginning after December 31, 1986 (notwithstanding § 1.1502-75(a)(1)) on or before January 3, 1991, and

(2) On the top of any such return prominently affixing a statement containing the following declaration: "THIS RETURN" (or, if applicable,

"AMENDED RETURN") "REFLECTS A DELAYED ELECTION TO FILE AS A NEW GROUP UNDER § 1.1502-75T (d)(5)(vi)(B)". A delayed election to file as a new group automatically revokes any deemed election to continue in existence which was made under paragraph (d)(5)(iii) of this section.

(vii) *Effects of election to file as a new group.* If an old group or groups elect to file as a new group under paragraph (d)(5)(v) of this section, the following rules apply:

(A) *Termination.* Each old group is treated as if it terminated on January 1, 1987, and the termination is not treated as resulting from the acquisition by a nonmember of all of the stock of the common parent.

(B) *Taxable years.* Each member that filed returns other than on a calendar year basis shall close its taxable year on December 31, 1986, and change to a calendar year beginning on January 1, 1987. See section 843 and § 1.1502-76(a)(1).

(C) *Separate return limitation year and life-nonlife groups.* For purposes of § 1.1502-1(f), sections 1503(c) and 1504(c), and § 1.1502-47, the group is treated as coming into existence as a new group on January 1, 1987. Thus, for example, paragraphs (d)(5)(iv) (B) and (C) of this section do not apply.

(viii) *Earnings and profits.* All distributions after January 1, 1987 by a corporation, whether or not such corporation was a member of an old group, to an existing Blue Cross or Blue Shield organization (as defined in section 833(c)(2)) out of earnings and profits accumulated before 1987 are deemed made out of earnings and profits accumulated in pre-affiliation years. See § 1.1502-32(b)(2)(iii)(c) and (c)(2)(iii).

(ix) *Five-year tacking rules for certain life-nonlife groups.* For purposes of applying § 1.1502-47(d) (5) and (12) to any taxable year ending after 1986 to a corporation, whether or not the corporation was a member of an old group,

(A) The determination of whether the corporation was in existence and a member or tentatively treated as a member of a group, for taxable years ending before 1987, is made without regard to the exclusions under section 1504(b) (1) and (2) of any section 833 organization or life insurance company (as the case may be) and

(B) A section 833 organization is not treated as having a change in tax character solely by reason of the loss of its tax-exempt status due to the enactment of section 833.

This paragraph (d)(5)(ix) does not apply if an election to file as a new group under paragraph (d)(5)(v) of this section is made.

(x) *Time to revoke elections made before September 5, 1990.* An election by an old group to continue in existence or to file as a new group that was made (or deemed made) before September 5, 1990, may be revoked by filing an appropriate return (or returns) on or before January 3, 1991. For purposes of this paragraph (d)(5)(x), appropriate returns include separate returns filed by each member of the group or consolidated returns filed in accordance with a delayed election either under paragraph (d)(5)(iii)(B) or (vi)(B) of this section.

(xi) *Examples.* The following examples illustrate this paragraph (d)(5). In these examples, each corporation uses the calendar year as its taxable year.

Example 1. B is a section 833 organization. For several years, B has owned all of the outstanding stock of X, Y, and Z. X has owned all the outstanding stock of X₁ throughout X₁'s existence and Y has owned all of the outstanding stock of Y₁ throughout Y₁'s existence. For 1986 X and X₁ filed a consolidated federal income tax return but Y and Y₁ filed separate returns. Under paragraph (d)(5)(ii) of this section, X and X₁ and Y and Y₁ each constitute an old group because they either filed a consolidated return or were eligible to file a consolidated return for 1986. The X and Y groups may elect under paragraph (d)(5)(i) of this section to continue in existence. If they elect to continue, under paragraph (d)(5)(iv)(B) of this section, the separate return limitation year rules apply as follows: any taxable year of B or Z beginning before 1987 is treated as a separate return limitation year with respect to each other and to all other members of the group; any taxable year of X or X₁ beginning before 1987 is treated as a separate return limitation year with respect to B, Z, Y and Y₁, but not with respect to each other; and any taxable year of Y or Y₁ beginning before 1987 is treated as a separate return limitation year with respect to B, Z, X and X₁, but not with respect to each other.

Example 2. The facts are the same as in Example 1 except that B is owned by C, another section 833 organization. If the X and Y groups elect to continue, the results are the same as in Example 1, except that, under paragraph (d)(5)(iv)(B)(1) of this section, for purposes of applying the separate return limitation year rules, any taxable year of C beginning before 1987 is also treated as a separate return limitation year with respect to all other members of the group.

Example 3. The facts are the same as in Example 1 except that Y purchased Y₁ on January 1, 1985. If the X and Y groups elect to continue, the results are the same as in Example 1, except that, under paragraph (d)(5)(iv)(B)(2) of this section, for purposes of applying the separate return limitation year

rules, any taxable year of Y₁ beginning before 1985 is treated as a separate return limitation year with respect to Y as well as with respect to all other members of the group.

Example 4. B, a section 833 organization, has owned all the stock of X since November 1984. X has owned all the stock of L, a life insurance company, throughout L's existence. In 1986, X and L properly filed a life-nonlife consolidated return. Under paragraph (d)(5)(i) of this section, the X group elects to continue in existence. Under paragraph (d)(5)(iv)(C) of this section, the life-nonlife election will remain in effect. However, losses of B which arise before 1990 cannot be used to offset the income of L. See section 1503(c)(2) and § 1.1502-47(d)(13) and paragraph (d)(5)(iv)(C) of this section. Under paragraph (d)(5)(iv)(B) of this section, the separate return limitation year rules apply as follows: any taxable year of B beginning before 1987 is treated as a separate return limitation year with respect to all other members of the group; and any taxable year of X or L beginning before 1987 is treated as a separate return limitation year with respect to B, but not with respect to each other.

Example 5. The facts are the same as Example 4 except that, on January 1, 1984, B formed L₁, a life insurance company. Under paragraph (d)(5)(ix) of this section and section 1504(c), the first year L₁ is eligible to join in B's life-nonlife election is 1989.

Example 6. The facts are the same as in Example 4 except that B and the X group elect under paragraph (d)(5)(v) of this section to file as a new group. The X group will be considered to have terminated under § 1.1502-75(d)(1) on December 31, 1986. X and L are each separately subject to the separate return limitation year rules of § 1.1502-1(f). The first year L and L₁ are eligible to join the new group in a life-nonlife election is 1992 (five years after the new group is formed). See section 1504(c)(2) and paragraphs (d)(5)(vii)(C) and (ix) of this section.

The provisions contained in this Treasury decision are needed to immediately amend the consolidated return regulations in response to changes made by section 1012 of the Tax Reform Act of 1986. It is therefore found impracticable and contrary to the public interest to issue this Treasury decision with notice and public procedure under section 553(b) of title 5 of the United States Code or subject to the effective date limitations of section 553(d) of title 5, United States Code.

Michael J. Murphy,

Acting Commissioner of Internal Revenue.

Approved: August 24, 1990.

Kenneth W. Gideon,

Assistant Secretary to the Treasury.

[FR Doc. 90-20790 Filed 8-30-90; 11:30 am]

BILLING CODE 4830-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD-05-90-69; COTP Hampton Roads, Reg. 90-RFR 069]

Safety Zone Regulations; Atlantic Intracoastal Waterway, North Landing River, Virginia Beach, VA

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone around the Pungo Ferry Bridge, on the North Landing River, Atlantic Intracoastal Waterway, mile 28, at Virginia Beach, Virginia. This zone is needed to ensure the safety of mariners operating in the area while the main span girders for a new Pungo Ferry Bridge are placed in position over the waterway. The Captain of the Port, Hampton Roads, VA will enforce a safety zone extending 75 yards from both sides of the Pungo Ferry Bridge. Vessels or individuals will not be permitted to enter the safety zone, except as permitted by the Captain of the Port or his designated representative.

EFFECTIVE DATE: This regulation is effective at 7 a.m., September 15, 1990 and terminates at 6 p.m., September 18, 1990, unless sooner terminated by the Captain of the Port, Hampton Roads, Virginia.

FOR FURTHER INFORMATION CONTACT: LTJG C.E. Rawson, Project Officer, USCG Marine Safety Office, Hampton Roads, Norfolk Federal Building, 200 Granby Street, Norfolk, Virginia 23510. Tel: (804) 441-3294, (FTS) 827-3294.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is required to ensure the safety of mariners in the Pungo Ferry Bridge area.

Drafting Information

The drafter of this regulation is LTJG C. E. Rawson, project officer for the Captain of the Port, Hampton Roads.

Discussion of Regulation

Although the Atlantic Intracoastal Waterway will be closed to traffic between the Pungo Ferry Bridge, at mile 28, and the Centerville Turnpike Bridge, at mile 15.2 from 7 a.m., September 15, 1990 to 6 p.m., September 18, 1990 due to

work on both bridges, small boats may pass unimpeded between and under the bridges. In order to protect mariners from the hazards involving the main span girders being lifted into place and a construction barge being placed in the navigation channel, a safety zone is being established around the Pungo Ferry Bridge area, on the North Landing River, Atlantic Intracoastal Waterway, mile 28, at Virginia Beach, Virginia from 7 a.m., September 15, 1990 until 6 p.m., September 18, 1990. This safety zone will extend over the waters of the Atlantic Intracoastal Waterway 75 yards north and south of the Pungo Ferry Bridge. The safety zone will be enforced from 7 a.m., September 15, 1990 until 6 p.m., September 18, 1990, unless sooner terminated by the Captain of the Port, Hampton Roads, Virginia. During daylight hours while work is ongoing, Coast Guard vessels will be on scene to enforce the safety zone. Commercial and recreational boats will not be permitted to enter the safety zone, except during periods when no construction related hazards are deemed to exist.

This regulation is issued pursuant to 33 U.S.C. 1231 as set out in the authority citation for all of part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Final Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 reads as follows:

Authority: 33 U.S.C. 1225 and 1231; 49 CFR 1.46 and 33 CFR 1.01-30, 165.5, 165.20, and 165.23.

2. In part 165, a new § 165.T0569 is added, to read as follows:

§ 165.T0569 **Safety Zone: Atlantic Intracoastal Waterway, North Landing River, Virginia Beach, Virginia**

(a) *Location.* The following area is a safety zone:

The waters of the North Landing River within 75 yards north and south of the Pungo Ferry Bridge on Pungo River Road, located at mile 28 of the Atlantic Intracoastal Waterway, Virginia Beach, Virginia.

(b) *Definitions.* The designated representative of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Hampton Roads, Virginia to act on his

behalf. The following officers have or will be designated by the Captain of the Port: The senior Coast Guard boarding officer on each vessel enforcing the safety zone, and the Duty Officer at the Marine Safety Office, Norfolk, VA.

(1) The Captain of the Port, Hampton Roads and the Duty Officer at the Marine Safety Office, Norfolk, Virginia can be contacted at telephone number (804) 441-3307.

(2) The senior boarding officer on each vessel enforcing the safety zone can be contacted on VHF-FM channel 13 and 16.

(c) *Regulation.* (1) In accordance with the general regulations in § 165.33 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, Hampton Roads, Virginia.

(2) The operator of any vessel in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign.

(d) *Effective date.* This regulation is effective from 7 a.m., on September 15, 1990 and terminates at 6 p.m., September 18, 1990, unless sooner terminated by the Captain of the Port, Hampton Roads, Virginia.

Dated: August 27, 1990.

G. J. E. Thornton,

Captain, U.S. Coast Guard, Captain of the Port, Hampton Roads.

[FR Doc. 90-20814 Filed 9-4-90; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6888]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities were required to adopt floodplain management measures compliant with the NFIP revised regulations that became effective on October 1, 1985. If the communities did

not do so by the specified date, they would be suspended from participation in the NFIP. The communities are now in compliance. This rule withdraws the suspension. The communities' continued participation in the program authorizes the sale of flood insurance.

EFFECTIVE DATES: As shown in fifth column.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at:

P.O. Box 457, Lanham, Maryland 20706,
Phone: (800) 638-7418.

FOR FURTHER INFORMATION CONTACT:

Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street, Southwest, room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In

return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding.

In addition, the Director of the Federal Emergency Management Agency has identified the Special Flood Hazard Areas in these communities by publishing a Flood Insurance Rate Map. In the communities listed where a flood map has been published, section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the Special Flood Hazard Area shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal

Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on these participating communities.

List of Subjects in 44 CFR Part 64

Flood insurance and floodplains.

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table. In each entry, the suspension for each listed community has been withdrawn. The entry reads as follows:

§ 64.6 List of eligible communities

State	Community name	County	Community No.	Effective date	
Regular Program Communities:					
Maine.....	Brownfield, Town of.....	Oxford.....	230087	July 3, 1990.....	Suspension with- drawn. Do. Do
West Virginia.....	Spencer, City of.....	Roane.....	540185	August 15, 1990.....	
Do.....	Star City, Town of.....	Monongalia.....	540273do.....	

Issued: August 29, 1990.

C.M. "Bud" Schauerte,
Administrator, Federal Insurance
Administration.

[FR Doc. 90-20819 Filed 9-4-90; 8:45 am]

BILLING CODE 6718-21-M

**FEDERAL COMMUNICATIONS
COMMISSION**

47 CFR Part 73

[MM Docket No. 89-576; RM-7058]

**Radio Broadcasting Services; Helena,
MT**

AGENCY: Federal Communications
Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel *276C to Helena, Montana, reserving the channel for noncommercial educational use, in response to a petition filed by Hi-

Line Radio Fellowship, Inc. Canadian concurrence has been received for Channel *276C at coordinates 46-35-42 and 112-01-36. See, 55 FR 325, January 4, 1990.

EFFECTIVE DATE: October 15, 1990.

FOR FURTHER INFORMATION CONTACT:

Kathleen Scheuerle, Mass Media
Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-576, adopted August 15, 1990, and released August 30, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transportation Service,

(202) 857-3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Montana is amended by adding Channel *276C at Helena.

Federal Communications Commission.

Kathleen B. Levitz,
Deputy Chief, Policy and Rules Division,
Mass Media Bureau.

[FR Doc. 90-20774 Filed 9-4-90; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 900511-0111]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of inseason adjustments and closure.

SUMMARY: NOAA announces a modified landing limit for the commercial salmon fishery opening August 25, 1990, in the exclusive economic zone (EEZ) from the U.S.-Canada border to Cape Falcon, Oregon, and the closure of that fishery at midnight, August 26, 1990. The Director, Northwest Region, NMFS (Regional Director), has determined that when the fishery reopens on August 25, 1990, the landing limit should be 200 coho salmon, with no limit on chinook salmon. This modified landing limit is intended to maximize the harvest of chinook salmon in this subarea without exceeding the ocean share of salmon allocated to the commercial fishery. The Regional Director also has determined that the commercial fishery quota of 82,000 coho salmon for this subarea will be reached, and the fishery should be closed at midnight, August 26, 1990. The closure is necessary to conform to the preseason announcement of 1990 management measures and is intended to ensure conservation of coho salmon.

NOAA also announces a change in the fishing days per calendar week for the recreational salmon fishery in the EEZ from the Queets River to Leadbetter Point, Washington. In accordance with the preseason notice of 1990 management measures, this fishery has been open five days per week, Sunday through Thursday only. The Regional Director has determined that due to low catch rates, this fishery should be open seven days per week beginning on August 31, 1990, to provide recreational fishermen additional harvest opportunity. This action is intended to maximize the harvest of chinook and coho salmon in this subarea without jeopardizing season duration or exceeding the ocean share of salmon allocated to the recreational fishery.

DATES: Effective: Modification of the landing limit for the commercial salmon fishery from the U.S.-Canada border to Cape Falcon, Oregon, is effective at 0001 hours local time, August 25, 1990. Closure of the EEZ from the U.S.-Canada border to Cape Falcon, Oregon,

to commercial salmon fishing is effective at 2400 hours local time, August 26, 1990. Modification of the fishing week for the recreational salmon fishery from the Queets River to Leadbetter Point, Washington, is effective at 0001 hours local time, August 31. Actual notice to affected fishermen was given prior to those times through a special telephone hotline and U.S. Coast Guard Notice to Mariners broadcasts as provided by 50 CFR 661.20, 661.21, and 661.23 (as amended May 1, 1989).

Comments: Public comments are invited until September 13, 1990.

ADDRESSES: Comments may be mailed to Rolland A. Schmitt, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115-0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206-526-6140.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries are published at 50 CFR part 661. In its preseason notice of 1990 management measures (55 FR 18899, May 7, 1990), NOAA announced that the 1990 commercial fishery for all salmon species in the subarea from the U.S.-Canada border to Cape Falcon, Oregon, will open August 18-21 and August 25-28 subject to a subarea quota for coho salmon, a subarea harvest guideline for chinook salmon, and an overall quota for chinook salmon north of Cape Falcon. Furthermore, each participating vessel may land no more than 20 chinook and 200 coho during the first open period. The landing limit may be adjusted for additional open periods after the first one to aid in achieving the coho quota and the chinook guideline.

Based on the best available information following the first open period, the commercial fishery catch in the subarea in the second open period is expected to reach the 82,000 coho salmon quota, but not to reach the 8,400 chinook salmon guideline. Therefore, the Regional Director has determined that when this fishery reopens as regularly scheduled on August 25, the landing limit for this second open period should be adjusted to aid in more closely achieving the chinook guideline by removing the 20 chinook salmon restriction, while retaining the 200 coho salmon restriction. Therefore, each participating vessel in this commercial salmon fishery may land no more than 200 coho salmon, effective 0001 hours local time, August 25, 1990.

Regulations governing the ocean salmon fisheries specify at § 661.21(a)(1) that "When a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary will, by notice issued under § 661.23, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached."

Based on the best available information, the commercial fishery catch in the subarea from the U.S.-Canada border to Cape Falcon is projected to reach the 82,000 coho salmon quota by midnight, August 26, 1990. Therefore, the fishery in this subarea is closed to further commercial fishing effective 2400 hours local time, August 26, 1990.

In its preseason notice of 1990 management measures (55 FR 18903, May 7, 1990), NOAA announced that the 1990 recreational fishery for all salmon species in the subarea from the Queets River to Leadbetter Point, Washington, will open June 24 through September 20, Sunday through Thursday only, under a subarea quota for coho salmon and an overall quota for chinook salmon north of Cape Falcon.

Based on the best available information, the recreational fishery in this subarea is not expected to fully harvest its chinook and coho salmon allocation before the scheduled season ending date of September 20. The Regional Director had determined that by opening the fishery seven days per week, the recreational catch in this subarea will more closely achieve the chinook and coho salmon quotas while maintaining season duration through September 20. Inseason modification in the recreational fishing days per calendar week is authorized by regulations at § 661.21(b)(1)(iii). Therefore, the recreational salmon fishery from the Queets River to Leadbetter Point, Washington, is open seven days per week effective 0001 hours local time, August 31, 1990.

In accordance with the revised inseason notice procedures of 50 CFR 661.20, 661.21, and 661.23, actual notice to fishermen of these actions was given prior to the times listed above by telephone hotline number (206) 526-6667 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 KHz.

The Regional Director consulted with representatives of the Pacific Fishery Management Council, the Washington

Department of Fisheries, and the Oregon Department of Fish and Wildlife regarding these actions affecting the commercial fishery from the U.S.-Canada border to Cape Falcon, Oregon, and the recreational fishery from the Queet River to Leadbetter Point, Washington. The states of Washington and Oregon will manage the commercial and recreational fisheries in State waters adjacent to these areas of the EEZ in accordance with this federal action. This notice does not apply to treaty Indian fisheries or to other fisheries which may be operating in other areas.

Because of the need for immediate action, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. Therefore, public comments on this notice will be accepted for 15 days after filing with the Office of the Federal Register, through September 13, 1990.

Other Matters

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 29, 1990.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-20765 Filed 8-29-90; 4:24 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register

Vol. 55, No. 172

Wednesday, September 5, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R-0706]

Bank Holding Companies and Change in Bank Control; Nonbanking Activities and Acquisitions by Bank Holding Companies

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Board is seeking public comment on a proposal to amend the provisions in Regulation Y implementing the Bank Holding Company Act (the "BHC Act") to add to the regulatory list of nonbanking activities generally permissible for bank holding companies certain financial advisory activities and the provision of full service securities brokerage services. The Board has previously determined by order that subject to certain restrictions, these activities are so closely related to banking as to be a proper incident thereto for purposes of section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)). The proposal would modify some of the restrictions on these activities previously imposed by order.

DATES: Comments must be received by October 22, 1990.

ADDRESSES: Comments, which should refer to Docket No. R-0706, may be mailed to the Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, NW., Washington, DC 20551, to the attention of Mr. William W. Wiles, Secretary; or delivered to room B-2223, Eccles Building, between 8:45 a.m. and 5:15 p.m. Comments may be inspected in room B-1122 between 9 a.m. and 5 p.m., except as provided in § 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8.

FOR FURTHER INFORMATION CONTACT: Scott G. Alvarez, Assistant General Counsel (202/452-3583), Andrew T. Karp, Attorney (202/452-3554), or

Brendan T. Gormley, Attorney (202/452-3721), Legal Division; or Sidney M. Sussan, Assistant Director (202/452-2638), Division of Banking Supervision and Regulation, Board of Governors. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Earnestine Hill or Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION:

Background

The Bank Holding Company Act of 1956, as amended, generally prohibits a bank holding company from engaging in nonbanking activities or acquiring voting securities of any company that is not a bank. Section 4(c)(8) of the BHC Act provides an exception to this prohibition where the Board determines after notice and opportunity for hearing that the activities being conducted are "so closely related to banking or managing or controlling banks as to be a proper incident thereto." 12 U.S.C. 1843(c)(8). The Board is authorized to make this determination by order in a individual case or by regulation.

The Board has included in its Regulation Y a list of nonbanking activities that the Board has determined to be closely related to banking under section 4(c)(8) of the BHC Act and, therefore, generally permissible for bank holding companies. Applications by bank holding companies to engage in activities included on the Regulation Y list of permissible nonbanking activities may be processed by the Reserve Banks under expedited procedures pursuant to delegated authority.

Proposed Nonbanking Activities

The Board is seeking public comment regarding whether the Regulation Y list of nonbanking activities permissible for bank holding companies (12 CFR 225.25) should be amended to add so-called full service securities brokerage activities, and financial advisory activities previously approved by order.

Full Service Securities Brokerage

The Board's regulations permit bank holding companies to provide securities brokerage and investment advisory activities separately. See 12 CFR 225.25(b) (4) (investment advice), 225.25(b) (15) (securities brokerage). In addition, the Board has previously determined by order that bank holding companies may provide these services

on a combined basis to institutional and retail customers pursuant to section 4(c)(8) of the BHC Act. See e.g., *National Westminster Bank PLC*, 72 Federal Reserve Bulletin 584 (1986), affirmed *Securities Industry Ass'n v. Board of Governors*, 821 F.2d 810 (D.C. Cir. 1987), cert. denied, 108 S.Ct. 697 (1988); *Bank of New England Corporation*, 74 Federal Reserve Bulletin 700 (1988) (combined services offered to institutional and retail customers).

In its orders permitting bank holding companies to engage in full service brokerage activities, the Board established a framework that includes certain limitations and disclosure requirements that were designed to address potential adverse effects, including conflicts of interests, that may result from combining investment advisory and securities brokerage activities. See e.g., *Bank of New England Corporation*, 74 Federal Reserve Bulletin 700 (1988). Many of the restrictions imposed by the framework established in these previous Board orders are similar to the existing requirements of federal and state securities laws. In this regard, the brokerage subsidiaries of bank holding companies are required by federal securities laws to be registered with the Securities and Exchange Commission (the "SEC") and the National Association of Securities Dealers, Inc. and are subject to various federal and state securities laws in conducting these brokerage activities. Brokers are also subject to the general anti-fraud provisions of the securities laws and to a duty, expressed in numerous SEC and judicial decisions, to deal fairly with customers. See e.g., 17 CFR 240.15c1-2 (SEC anti-fraud rule specifically applicable to broker-dealers).

The Board also requires that a holding company that engages, directly or indirectly, in combined securities brokerage and advisory services make certain disclosures to its customers. Since the Board's initial decision in this area, the Office of the Comptroller of the Currency has authorized operations subsidiaries of national banks to offer full service brokerage activities within the framework established by the relevant securities laws, and with similar disclosure requirements. See, e.g., O.C.C. Interpretive Letter 403 reprinted in [1988-89 Transfer Binder]

Fed. Banking L. rep. (CCH) ¶ 85,627 (December 9, 1987).

The Board proposes to add the conduct of full service securities brokerage activities to its regulatory list of permissible nonbanking activities with a requirement that the brokerage company disclose to all of its customers that the brokerage company is solely responsible for its contractual obligations and commitments; that it is not a bank or insured institution, and is separate from any affiliated bank or insured institution; and that the securities sold, offered, or recommended by the brokerage company are not deposits, are not insured by the FDIC, and are neither endorsed nor guaranteed by, nor constitute an obligation of, any bank. The proposal requires that these disclosures be made prominently and in writing before the brokerage company provides any brokerage or advisory services to its customers and again in its statements of accounts to customers. The brokerage company would, of course, continue to be subject to applicable federal and state securities laws.

The Board also proposes to retain the limitation that combination of discretionary investment management services with brokerage services be available only for institutional customers. *J.P. Morgan & Co., Incorporated*, 73 Federal Reserve Bulletin 810 (1987). The Board requests comments on whether it is appropriate to permit bank holding companies to provide these discretionary investment services to retail customers as well as institutional customers. In this regard, the Board notes that national banks may not offer these services unless the national bank has been authorized to offer trust services directly or through an operations subsidiary, pursuant to 12 U.S.C. 92a. See, 12 CFR part 9, Trust Banking Circular No. 23 (October 4, 1983), reprinted in, Fed. Banking L. Rep. (CCH) ¶ 60,575, and O.C.C. Interpretative Letter No. 353, reprinted in, [1985-1987 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,523. The Board has previously defined an "institutional customer." See, *The Chase Manhattan Corporation*, 74 Federal Reserve Bulletin 704 (1988). The Board proposes to amend Regulation Y to reflect this definition.

In its actions approving the combination of investment advice with brokerage services, the Board has limited director, officer, and employee interlocks between a bank and a

securities brokerage affiliate.¹ The Board is not proposing to retain restrictions on interlocks between a bank and an affiliated full-service brokerage company.

The Board requests public comment on whether other restrictions are necessary to address potential adverse effects, including conflicts of interests and unsafe and unsound banking practices, that may be associated with full service brokerage services.

The proposed regulation would not expand the securities brokerage and investment advisory authority of bank holding companies beyond that which is currently authorized by order. The Board notes that the proposed regulation would not affect the framework governing bank holding company subsidiaries that underwrite or deal in bank-ineligible securities. In addition, this proposal is not intended to modify the Board's interpretive rule regarding the investment advisory activities of bank holding companies. See 12 CFR 225.125; 55 FR 25,849 (June 25, 1990) (proposed revision to interpretive rule).

Financial Advisory Services

The Board has previously determined by order that the provision of financial advisory services is closely related to banking for purposes of section 4(c)(8) of the BHC Act. Specifically, the Board has by order permitted bank holding companies to provide advice to financial and nonfinancial institutions and high net worth individuals with respect to mergers, acquisitions, divestitures, financing transactions, structuring and arranging loan syndications, interest rate swaps, interest rate caps, and similar transactions, including rendering fairness opinions and providing valuation services; and conducting feasibility studies for corporations. See, e.g., *SunTrust Banks, Inc.*, 74 Federal Reserve Bulletin 256 (1988); *Banc One Corporation*, 76 Federal Reserve Bulletin ____ (Order dated July 16, 1990) (approving provision of financial advisory services to high net worth individuals). In making this determination, the Board relied on several limitations designed to mitigate the effects of possible conflicts of interests that could arise from the activity, and to ensure that bank holding companies and their nonbanking subsidiaries would not exert significant control over the operations of the client institution through the provision of financial advisory services.

¹ *Signet Banking Corporation* 75 Federal Reserve Bulletin 34 (1989).

The Board also proposes to permit bank holding companies to conduct feasibility studies for nonfinancial and financial institutions and high net worth individuals. The Board has permitted bank holding companies to provide feasibility studies only for corporations.

The Board proposes to add the provision of financial advisory services to its regulatory list of activities, permissible for bank holding companies. The proposal would not permit bank holding companies that provide financial advisory activities to perform routine tasks or operations for a customer on a daily or continuous basis. In addition, the proposal would not permit a financial advisor to make available to any of its affiliates confidential information regarding a party received in the course of providing any of the financial advisory services, except as authorized by the party. The Board seeks public comment on these requirements as well as on whether other requirements may be appropriate to address possible conflicts of interests, unsafe and unsound banking practices, or other potential adverse effects.

Section-by-Section Analysis

Section 225.25(b)(4)(i)-(v): The proposed amendment retains in full the existing investment and financial advisory provisions of § 225.25(b)(4)(i)-(v).

Section 225.25(b)(4)(vi): The proposed amendment adds paragraph (vi) to § 225.25(b)(4). This paragraph authorizes bank holding companies to engage in additional varieties of financial advisory activities subject to the limitations set forth in that subsection.

Section 225.25(b)(15): The proposed amendment retains in full the existing securities brokerage provisions and modifies the subsection to authorize nonbank subsidiaries of bank holding companies to engage, subject to certain disclosure requirements, in securities brokerage in combination with investment advisory services permissible under § 225.35(b)(4) of Regulation Y.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. No. 95-354, 5 U.S.C. 601 et seq.), the Board of Governors of the Federal Reserve System certifies that this notice of proposed rulemaking, if adopted as a final rule, will not have a significant economic impact on a substantial number of small entities that would be subject to the regulation.

List of Subjects in 12 CFR Part 225

Administrative practice and procedure, Appraisals, Banks, Banking, Capital adequacy, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities, State member banks.

For the reasons set forth in this notice, and pursuant to the Board's authority under sections 4(c)(8) and 5(b) of the Banking Holding Company Act of 1956, as amended (12 U.S.C. 1843(c)(8), 1844(b)), the Board proposes to amend 12 CFR part 225 as follows:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1831i, 1843(c)(8), 1844(b), 3106, 3108, 3907, 3909, 3310, and 3331-3351.

§ 225.25 [Amended]

2. In § 225.25 the footnotes are redesignated as shown below:

Section and paragraph	Current footnote No.	New footnote No.
§ 225.25		
(b)(5)(iii).....	3	4
(b)(5)(iv).....	4	5
	5	6
(b)(5)(vi).....	6	7
(b)(8)(i)(B).....	7	8
(b)(8)(ii).....	8	9
(b)(8)(iii)(B).....	9	10
(b)(8)(iv).....	10, 11	11, 12
(b)(10)(ii).....	12	13
(b)(11).....	13	14
(b)(11)(iv).....	14	15

3. In § 225.2, paragraphs (g) through (o) are redesignated as paragraphs (h) through (p) and new paragraph (g) is added to read as follows:

§ 225.2. Definitions.

* * * * *

(g) *Institutional customer* means:

(1) A bank (acting in an individual or fiduciary capacity); a savings and loan association; an insurance company; a registered investment company under the Investment Company Act of 1940; or a corporation, partnership, proprietorship, organization or institutional entity with net worth exceeding \$1,000,000;

(2) An employee benefit plan with assets exceeding \$1,000,000, or whose investment decisions are made by a bank, insurance company or investment advisor registered under the Investment Advisors Act of 1940;

(3) A natural person whose individual net worth (or joint net worth with his or her spouse) at the time of receipt of the investment advice or brokerage services exceeds \$1,000,000;

(4) A broker-dealer or option trader registered under the Securities Exchange Act of 1934, or other securities professional; or

(5) An entity all of the equity owners of which are institutional customers.

4. In § 225.25, the word "and" is removed at the end of paragraph (b)(4)(iv); the period at the end of paragraph (b)(4)(v) is removed and "and" is added; and new paragraph (b)(4)(vi) is added to read as follows:

§ 225.25 List of permissible nonbanking activities.

* * * * *

(b) * * *

(4) * * *

(vi) (A) Providing advice to financial and nonfinancial institutions and high net worth individuals³ with respect to mergers, acquisitions, divestitures, financing transactions, structuring and arranging loan syndications, interest rate swaps, interest rate caps, and similar transactions, including rendering fairness opinions, providing valuation services, and conducting feasibility studies;

(B) Financial advisory activities under paragraph (b)(4)(vi)(A) of this section shall not encompass the performance of routine tasks or operations for a customer on a daily or continuous basis, and, the financial advisor shall not make available to any of its subsidiaries confidential information regarding a party obtained in the course of providing any financial advisory services except as authorized by the party.

5. In § 225.25, paragraph (b)(15) is revised to read as follows:

§ 225.25 [Amended]

* * * * *

(b) * * *

(15) *Securities brokerage.* (i) Providing securities brokerage services, related securities credit activities pursuant to the Board's Regulation T (12 CFR part 220), and incidental activities such as offering custodial services, individual retirement accounts, and cash management services, if the securities brokerage services are restricted to buying and selling securities solely as agent for the account of customers and

³ High net worth individual means for purposes of this paragraph an individual whose net worth (or joint net worth with a spouse) exceeds one million dollars.

do not include securities underwriting or dealing; and

(ii) A bank holding company or its nonbank subsidiary may provide securities brokerage services under paragraph (b)(15)(i) of this section in combination with investment advisory services permissible under paragraph (b)(4) of this section¹⁶ if the brokerage company prominently discloses to each customer in writing before providing any brokerage or advisory services and again in any customer account statements that:

(A) The brokerage company is solely responsible for its contractual obligations and commitments;

(B) The brokerage company is not a bank and is separate from any affiliated bank; and

(C) The securities sold, offered, or recommended by the brokerage company are not deposits, are not insured by the Federal Deposit Insurance Corporation, do not constitute obligations of any bank, and are not endorsed or guaranteed by any bank, unless this is the case.

Board of Governors of the Federal Reserve System, August 29, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-20780 Filed 9-4-90; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. 89-NM-205-AD]

Airworthiness Directives; Aerospatiale Model ATR42; Avions Marcel Dassault-Breguet Aviation (AMD-BA) Falcon Fan Jet Basic Model and Series D; Boeing of Canada, Ltd., de Havilland Division, Models DHC-7 and DHC-8; Construcciones Aeronauticas, S.A. (CASA) Model C-212; Canadair Models CL-600-1A11 and CL-600-2A12; Empresa Brasileira de Aeronautica (EMBRAER) Model EMB-120; and Mitsubishi Heavy Industries, Ltd. (MHI) Model YS-11 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

¹⁶ A bank holding company or its subsidiary that provides investment advisory services under paragraph (b)(4) of this section in combination with securities brokerage services under this subparagraph may exercise discretion in buying and selling securities solely on behalf of institutional customers, and solely at the request of the customer. A bank holding company or its subsidiary providing these services must comply with applicable law, including fiduciary principles, and obtain the consent of its customer before engaging, as principal or with an affiliate, in securities transactions on the customer's behalf.

ACTION: Notice of proposal rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain transport category airplanes certificated for operation with a main deck Class B cargo compartment, which would require the conversion of all main deck Class B cargo compartments to the Class C configuration; or the use of flame penetration-resistant containers with smoke detection and fire extinguishing systems to carry all cargo; or the accomplishment of certain operational and equipment changes and design modifications to maximize cargo fire detection and control. This proposal is prompted by a report of an uncontained fire in a main deck cargo compartment. This condition, if not corrected, could result in an uncontrolled cargo fire that could cause extensive damage to the systems and structure of the airplane.

DATES: Comments must be received no later than November 26, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-205-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The report entitled, "Evaluation of Transport Airplane Main Deck Cargo Compartment Fire Protection Certification Procedures," referenced in the Discussion section, below, may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM-113; telephone (206) 227-2145. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-205-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

In November 1987, a Boeing Model 747-200 "Combi" airplane operating with a main deck Class B cargo compartment, as defined by Federal Aviation Regulation (FAR) 25.857(b), was involved in an accident. Investigation revealed evidence of a major fire on board the airplane, which developed from an undetermined origin and progressed within the main deck cargo compartment. This condition, if not corrected, could result in an uncontrolled fire that could cause extensive damage to the systems and structure of the airplane.

This information prompted an FAA review of existing regulations, policies, and procedures pertaining to the certification of large main deck Class B cargo compartments with volumes exceeding 200 cubic feet. The results of this review are contained in a report titled "Evaluation of Transport Airplane Main Deck Cargo Compartment Fire Protection Certification Procedures," which has been made a part of the Rules Docket for examination by interested persons. The report concludes that, notwithstanding compliance with the existing regulations, airplanes equipped with main deck Class B cargo compartments do not provide an acceptable level of safety in terms of smoke and fire protection.

The FAA is considering the development of new type certification and operations regulations to address this issue; however, the existing unsafe condition requires immediate action, applicable to both new production and in-service airplanes.

On March 19, 1990, the FAA issued AD 89-18-12-R1, Amendment 39-6557 (55 FR 11163, March 27, 1990), applicable to certain Boeing and McDonnell Douglas series airplanes equipped with

main deck Class B cargo compartments. That amendment, prompted by the same accident described above, requires certain operational and equipment changes and design modifications to be accomplished to maximize cargo fire detection and control. The requirements of this proposed rule are similar to those of AD 89-18-12-R1, since the FAA has determined that this same unsafe condition could exist on any transport airplane operating with a main deck Class B cargo compartment.

The FAA has considered the following three alternatives for addressing the unsafe condition presented by inadequate smoke and fire protection in the main deck Class B cargo compartment: (1) Conversion of Class B cargo compartments to a Class C cargo compartment configuration, meeting the requirements of FAR 25, appendix F, part III; (2) the use of flame penetration-resistant containers, meeting the requirements of FAR 25.857(c), with ceiling and sidewall liners and floor panels meeting the requirements of FAR 25, appendix F, part III, when carrying all cargo; and (3) accomplishment of various operational and equipment changes and design modifications to maximize cargo fire detection and control (discussed below).

The FAA considers the conversion of Class B cargo compartments to the Class C configuration to be technically the best solution to address the identified unsafe condition. However, the FAA acknowledges that for many affected operators, this conversion process may be cost prohibitive and may not be feasible for timely accomplishment. Therefore, the proposed operational and equipment changes and design modifications of the Class B cargo compartment are considered to provide an acceptable level of safety for previously approved type designs.

This proposal would require operators, within one year, to implement the following procedures and to incorporate the following systems and equipment:

1. Establishment of fire fighting procedures to fight cargo fires, which would include the use of individuals trained to fight cargo fires.
2. Repetitive visual inspections of the cargo compartment to monitor for evidence of fire.
3. Protective garments and protective breathing equipment for individuals fighting a cargo fire.
4. Additional portable fire extinguishers appropriately located for use in the compartment.
5. Two-way communication means between the flight deck, the station

assigned to the individual trained to fight cargo fires, and the interior of the cargo compartment.

6. Cargo loading envelopes and limitations to provide access to all the cargo for fighting a fire.

Within three years, operators would then be required to accomplish one of the following three alternatives:

1. **Alternative 1:** Modify the Class B cargo compartment to comply with the requirements of a Class C cargo compartment, as defined in FAR 25.855 (Amdt. 25-60) 25.857(c), and 25.858 (Amdt. 25-54); or

2. **Alternative 2:** Modify all main deck Class B cargo compartments to include a placard installed in conspicuous locations throughout the compartment requiring all cargo carried in that compartment to be loaded in an approved flame penetration-resistant container; or

3. **Alternative 3:** In addition to the new procedures, and additional systems and equipment listed above, modify the Class B compartment to include the following items intended to enhance detection of a fire, increase accessibility to a fire, improve fire fighting capability, and contain and control a fire temporarily, should the flight crew be unable to immediately extinguish fire or should the fire be inaccessible because of fire/smoke conditions:

a. A compartment fire extinguishing system that provides an extinguishant concentration to "knock down" a fire and suppress it, allowing time for a trained individual to find and extinguish a fire, or to verify that the fire is extinguished;

b. A smoke or fire detection system that meets FAR 25.858 (Amdt. 25-54);

c. A means to shut off ventilation system air inflow to the compartment from the flight deck;

d. A temperature indication system;

e. A cargo compartment liner that meets FAR 25.855 (Amdt. 25-60).

f. Fire thermal protective covers for cockpit voice and flight data recorders, windows, safety devices, wiring, flight controls (unless it can be shown that a fire could not result in jamming or loss of affected control systems), and other equipment necessary for safe flight and landing that is located within the compartment. (This is necessary to ensure that items which are not critical for continued safe flight, but are essential for the overall safe operation of the airplane, are not damaged in the event of a cargo compartment fire.);

g. Improved illumination within the cargo compartment; and

h. A means to effectively discharge

portable fire extinguishers into each container or pallet.

If either Alternative 1 or 2 of the three-year compliance requirement is accomplished, the initial procedures, systems, and equipment required to be implemented or incorporated within one year would be rendered either unnecessary or redundant. Therefore, accomplishment of either of those alternatives would constitute terminating action for those initial requirements. However, if Alternative 3 is accomplished, compliance with those initial requirements would still be necessary in order to ensure an acceptable level of safety.

In light of the fact that this proposal addresses smaller aircraft, there are certain differences between the proposed requirements of this action and the requirements of AD 89-18-12-R1, which is applicable to large Boeing and McDonnell Douglas series airplanes:

1. For airplanes having Class B cargo compartments with a floor area (including aisles) of 200 square feet or less, this proposed action would not require that the individual trained to fight cargo fires ("firefighter") be in addition to crewmembers required by the operational rules. For an all-passenger or combination passenger-cargo operation, the designated firefighter may be a cabin attendant, but must not be the pilot or co-pilot.

2. A "knockdown" extinguishing system is proposed (a) as an initial short term three-year option to the trained firefighter and most of the operational and equipment requirements applicable to airplanes with Class B cargo compartments that have a floor area 200 square feet or less; and (b) as an initial three-year requirement for airplanes having Class B cargo compartments with a floor area of more than 200 square feet. The knockdown extinguishing system should be capable of knocking down and suppressing a fire for a duration of not less than 15 minutes. The difference in this aspect between this proposal and AD 89-18-12-R1 is intended to reduce the economic burden imposed on operators of smaller airplanes by the requirement for an additional firefighter beyond the operational crew requirements.

3. This notice proposes to require fewer portable fire extinguishers for Class B cargo compartments under 400 cubic feet, when compared to AD 89-18-12-R1. The airplanes addressed by this proposal have Class B cargo compartments that generally are loaded by hand due to the door size restriction, and have limited loading space due to

the smaller fuselage diameters. This type cargo is more easily moved for access to a fire source than that normally carried on airplanes loaded with pallets or containers, as addressed by AD 89-18-12-R1. Further, tests are being proposed in this Notice to demonstrate accessibility. Because these features provide quicker and more direct accessibility to a fire source, it is expected that less fire extinguishing agent will be necessary than that required by AD 89-18-12-R1. Class B compartments containing pallets or containers, as addressed by AD 89-18-12-R1, are expected to require a greater quantity of extinguishing agent, since direct access to the fire source may not always be expeditious and localized flooding may be necessary to control and extinguish a fire.

4. This notice proposes the installation of various placards, and the amendment of the appropriate Weight and Balance and loading instructions to ensure clear access to luggage and cargo for fire fighting purposes. This proposal is prompted by reports of loaded cargo blocking aisles that are necessary for emergency egress, access to emergency equipment, and access to cargo for fire fighting purposes.

5. In proposing this AD, due consideration has been given to minimize the economic impact of the modifications, to allow time for the manufacturers to develop the service bulletins necessary for the more complicated modifications, and to provide lead time for the delivery of essential materials and parts.

The airplane models listed below are manufactured in the following foreign countries and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement:

- Aerospatiale Model ATR42 in France;
- Avions Marcel Dassault-Brequet Aviation (AMD-BA) Falcon Fan Jet Basic Model and Series D in France;
- Contrucciones Aeronauticas S.A. (CASA) Model C-212 in Spain and Indonesia;
- Canadair Models CL-600-1A11 and CL-600-2A12 in Canada;
- de Havilland Models DHC-7 and DHC-8 in Canada;
- EMBRAER Model EMB-120 in Brazil; and
- Mitsubishi Heavy Industries, Ltd. (MHI) Model YS-11 in Japan.

It is estimated that 242 airplanes of U.S. registry would be affected by this AD. Based on information obtained from

industry groups and manufacturers, the cost to accomplish the conversion of a Class B compartment a Class C configuration is estimated to be between \$100,000 and \$200,000 per airplane for the affected airplanes. The costs associated with incorporating additional design features, enhanced protective systems and equipment, and fire control procedures for the Class B cargo compartment are estimated to be somewhat less per airplane than for conversion to a Class C configuration, since these changes require less redesign than is required for conversion.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. Section 39.13 is amended by adding the following new airworthiness directive:

§ 39.13 [Amended]

Aerospatiale; Avions Marcel Dassault-Breguet Aviation (AMD-BA); Boeing of Canada, Ltd., de Havilland Division; Construcciones Aeronauticas, S.A. (CASA); Canadair; Empresa Brasileira de Aeronautica (Embraer); and Mitsubishi Heavy Industries, Ltd. (MHI): Applies to the following models and series of airplanes equipped with a Class B cargo compartment, as defined by Federal Aviation Regulation (FAR) 25.857(b) or its predecessors, with a volume exceeding 200 cu. ft.; certificated in any category:

Aerospatiale Model ATR42 series airplanes; Avions Marcel Dassault-Breguet Aviation (AMD-BA) Falcon Fan Jet Basic Model and Series D airplanes with Butler National Corporation STC SA1467SW installed; Boeing of Canada, de Havilland Division, Models DHC-7 and DHC-8 series airplanes. Construcciones Aeronauticas S.A. (CASA) Model C-212 series airplanes; Canadair Models CL-600-1A11 and CL-600-2A12 with Garrett General Aviation Services Company Supplemental Type Certificate (STC) SA1951NM installed; Empresa Brasileira de Aeronautica (EMBRAER) Model EMB-120 series airplanes; and Mitsubishi Heavy Industries, Ltd. (MHI) Model YS-11 series airplanes.

Compliance is required as indicated, unless previously accomplished.

To minimize the hazard associated with a main deck Class B cargo compartment fire, accomplish the following:

A. Within one year after the effective date of this rule, or prior to carrying cargo in a Class B cargo compartment, whichever occurs later, accomplish the following in accordance with the appropriate technical data approved by the Manager listed below for the following airplane manufacturers:

Aerospatiale and CASA

Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, 98055-4056.

Canadair (STC No. SA1951NM)

Manager, Chicago Aircraft Certification Office, ACE-115C, FAA, Central Region, 2300 East Devon Avenue, room 232, Des Plaines, Illinois 60018.

DeHavilland

Manager, New York Aircraft Certification Office, ANE-170, FAA, New England Region, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581.

EMBRAER

Manager, Atlanta Aircraft Certification Office, ACE-115A, FAA, Central Region, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia 30349.

AMD-BA (STC No. SA1467SW)

Manager, Wichita Aircraft Certification Office, ACE-115W, FAA, Central Region, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209.

MHI

Manager, Los Angeles Aircraft Certification Office, ANM-100L, FAA, Northwest Mountain Region, 3229 East

Spring Street, Long Beach, California 90806-2425.

1. For airplanes having Class B cargo compartments with 200 square feet or less of floor area, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following:

FOR EACH FLIGHT IN WHICH CARGO IS TRANSPORTED IN THE CLASS B CARGO COMPARTMENT:

a. A minimum of one individual trained to fight cargo fires must be provided.

(1) This individual is in addition to the pilot and copilot and may be a flight attendant for airplanes being operated with passengers on board.

(2) This individual may be the pilot or the copilot when the airplane is being operated with cargo only and no passengers.

(3) The training program must be approved by the FAA.

b. Prior to flight, the pilot, copilot, or individual required by paragraph A.1.a. of this AD must make a visual inspection throughout the Class B cargo compartment to verify access to cargo and the general fire security of the compartment after the cargo door is closed and secured.

c. At intervals not to exceed 30 minutes in flight and continuously, as directed by the pilot, after a smoke alarm, the individual trained to fight cargo fires must conduct a visual inspection throughout the Class B cargo compartment to monitor for evidence of fire, unless an approved temperature (thermal) monitoring system is installed.

d. Establish fire fighting procedures for controlling cargo compartment fires.

2. For airplanes having Class B cargo compartments with 200 square feet or less of floor area, incorporate the following systems and equipment:

a. Provide appropriate protective garments stored adjacent to the cargo compartment entrance for use by the designated individual trained to fight cargo fires required by paragraph A.1.a. of this AD.

b. Provide a minimum of 30 minutes of protective breathing and an additional quantity of oxygen sufficient to conduct the post fire surveillance required by paragraph A.1.c. of this AD. This equipment must meet the requirements of Technical Standard Order (TSO) C-116, Action Notice 8150.2A, or equivalent, and be stored adjacent to the Class B cargo compartment entrance.

c. Provide portable fire extinguisher bottles containing Halon 1211 fire extinguishant, or its equivalent, that are readily available for use in the Class B cargo compartment as follows:

(1) A minimum of 16 lbs. total of extinguishant, contained in no more than two bottles, for Class B cargo compartments under 400 cubic feet volume.

(2) A minimum of 48 lbs. total of extinguishant for Class B cargo compartments equal to or over 400 cubic feet volume. At least two bottles must each be a minimum of 16 lb. capacity.

d. Provide Underwriters Laboratories (UL) approved, 2A rated water portable fire extinguishers, or their equivalent, adjacent to

the Class B cargo compartment entrance for use in the compartment, as follows:

(1) At least one 2½ gallon portable water extinguisher for Class B cargo compartments less than 400 cubic feet in volume.

(2) At least two 2½ gallon portable water extinguishers for Class B cargo compartments equal to or greater than 400 cubic feet in volume.

e. Provide a means for two-way communications between the following:

(1) the flight deck and the station assigned for the individual trained to fight cargo fires.

(2) The flight deck and the interior of the cargo Class B compartment.

f. Install placards in conspicuous place(s) within the Class B cargo compartment clearly defining the cargo loading envelope and limitations, and amend the appropriate Weight and Balance and loading instructions by description and diagrams to include the following information:

(1) Ensure aisles are cleared of sufficient width along the entire length of the loaded cargo compartment that would allow for easy movement of a crewmember or firefighter with fire fighting gear and that would allow access to any part of the cargo;

(2) Ensure aisles are cleared of sufficient width along the entire length of two sides of a loaded pallet or container, that would allow for easy movement of a crewmember or firefighter with fire fighting gear and that would allow access to each pallet or container;

(3) Ensure accessibility to any piece of hand loaded luggage or cargo or any pallet or container within 20 seconds from entering a loaded cargo compartment, as demonstrated by tests. These tests are for the purpose of establishing loading envelopes and may be conducted on the ground in a smoke-free environment. The 20 seconds includes the time it takes to remove cargo nets and move any luggage or cargo, but does not include equipment donning time; and

(4) Ensure that space is designated for luggage or cargo that is displaced in order to gain access for fire fighting. This space, when filled with displaced luggage or cargo, should not block emergency egress. The space may be on top of other luggage or cargo; and

(5) Ensure aisles are cleared for access to any emergency equipment, door, or emergency exit.

3. In lieu of the requirements of paragraphs A.1.a. through A.1.c. and A.2.a. through A.2.e of this AD, install a "knock down" fire extinguishing system controllable from the pilot stations, which provides an initial fire extinguishant concentration of at least 5 percent of the empty compartment volume of Halon 1301 or equivalent, and a fire suppression extinguishant concentration of at least 3 percent of the empty compartment volume of Halon 1301 or equivalent, for a period of time not less than 15 minutes.

4. For airplanes having Class B cargo compartments with more than 200 square feet of floor area, in addition to the requirements of A.1.d. and A.2.f. of this AD, install a "knock down" fire extinguishing system in accordance with paragraph A.3. of this AD.

Note: In accordance with paragraph C. of this AD, if the requirements of paragraph B.1 or B.2. are accomplished within one year

after the effective date of this AD, compliance with paragraph A. of this AD is unnecessary.

B. Within three years after the effective date of this AD, or prior to carrying cargo in a Class B cargo compartment, whichever occurs later, accomplish the requirements of paragraph B.1., B.2., or B.3., below:

1. Modify the Class B cargo compartment to comply with the requirements for a Class C cargo compartment, as defined in FAR 25.855 (Amdt. 25-60), 25.857(c), and 25.858 (Amdt. 25-54).

2. Modify all main deck Class B cargo compartments to require the following placard installed in conspicuous locations approved by the Manager of the cognizant FAA office specified in paragraph A. of this AD throughout the compartment: "Cargo carried in this compartment must be loaded in an approved flame penetration-resistant container meeting the requirements of FAR 25.857(c), with ceiling and sidewall liners and floor panels that meet the requirements of FAR 25, appendix F, part III, (Amdt. 25-60)."

3. In addition to the requirements of paragraph A.1. and A.2. of this AD, accomplish the following in accordance with appropriate technical data approved by the Manager of the cognizant FAA office specified in paragraph A. of this AD, to include the following:

a. Provide a cargo compartment fire "knock down" extinguishing system, controllable from the pilot stations, that provides an initial fire extinguishant concentration of at least 5 percent of the empty compartment volume of Halon 1301 or equivalent, and a fire suppression extinguishant concentration of at least 3 percent of the empty compartment volume of Halon 1301 or equivalent, for a period of time not less than 15 minutes.

b. Provide a smoke or fire detection system that meets the requirements of FAR 25.858 (Amdt. 25-54) and also provides an aural and visual warning to the station assigned to the individual trained to fight cargo fires. The designated station must be located adjacent to the inflight access door to the cargo compartment.

c. Provide a means from the flight deck to shut off ventilation system inflow to the cargo compartment.

d. Provide a temperature (thermal) indication system to the flight deck and station designated for the individual trained to fight cargo fire to advise of potentially hazardous conditions within the cargo compartment.

e. Provide a cargo compartment liner that meets the requirements of FAR 25.855 (Amdt. 25-60); the smoke/fire barrier between the occupants and cargo compartment must extend from the cargo compartment floor to the ceiling liner, or top skin of the airplane, and from the right side liner to the left side liner of the cargo compartment. The liner and barrier seals must also be constructed of materials that meet the Flame Penetration Resistance requirements of FAR 25, appendix F, part III (Amdt. 25-60), except that currently installed glass fiber reinforced resin material is acceptable. In addition, provide protective covers for cockpit voice and flight data

recorders, windows, wiring, and primary flight control systems (unless it can be shown that a fire could not cause jamming or loss of control), and other equipment within the compartment that is required for safe flight and landing; those covers must be constructed of materials that meet the Flame Penetration Resistance requirements of FAR 25, appendix F, part III (Amdt. 25-60).

f. Provide illumination in the cargo compartment as follows:

(1) General area illumination of the cargo with an average illumination of 0.1 foot-candle measured at 40-inch intervals both at one-half the pallet or container height, and at the full pallet or container height.

(2) Illumination of the access pathways required by paragraph A.2.f. of this AD under visibility conditions likely to be encountered after fire and discharge of the fire extinguishant, and prior to the decay of extinguishant concentration below 3 percent, must provide an average of 0.1 foot-candle measured at each 40-inch interval, with not less than 0.05 foot-candle minimum along a line that is within 2 inches of and parallel to the floor centered on the pathway.

g. Provide a safe means to effectively discharge portable fire extinguishers into each container or into each pallet that is covered.

h. Demonstrate the following features and functions during flight tests:

(1) Fire extinguishant concentration, required by paragraph B.3.a. of this AD.

(2) Smoke or fire detection system, required by paragraph B.3.b. of this AD.

(3) Prevention of smoke penetration into occupied compartments. [Refer to FAR 25.857(b)2 and 25.855(e)2.]

(4) Compartment temperature indication, required by paragraph B.3.d. of this AD.

(5) Fire fighting procedures, required by paragraph A.1.e. of this AD, including cargo compartment and cargo accessibility. These procedures, including accessibility, must be evaluated under reduced visibility conditions representative of those likely to occur with cargo fires.

i. For passenger-carrying airplanes having Class B cargo compartments with more than 200 square feet of floor area, provide an additional person trained to fight cargo fires to work with the individual required by A.1.a. of this AD. [This individual may be a required pilot of flight attendant.]

C. Compliance with the requirements of paragraphs B.1. or B.2. of this AD constitutes terminating action for the requirements of paragraph A. of this AD.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, of the cognizant FAA office specified in paragraph A. of this AD.

Note: The request should be submitted directly to the manager of the FAA office, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager of the specified FAA office.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to

operate airplanes to a base in order to comply with the requirements of this AD.

Issued in Renton, Washington, on August 22, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate,
Aircraft Certification Service.

[FR Doc. 90-20794 Filed 9-4-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 197

[Docket No. 90N-0080]

Seafood Inspection

AGENCY: Food and Drug Administration, HHS.

ACTION: Advance notice of proposed rulemaking; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA), with the concurrence of the National Marine Fisheries Service (NMFS), is jointly reopening until October 5, 1990. The period for public comments regarding the agencies' advanced notice of proposed rulemaking (ANPRM) announcing their intent to establish a voluntary, fee-for-service inspection program for fish and fish products to be operated by both agencies. This reopening of the comment period is in response to several written requests for additional time to submit public comments. This additional time afforded for the submission of comments will not affect the pilot training and inspection program planned for October through December 1990.

DATES: Comments by October 5, 1990.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Generic model Hazard Analysis Critical Control Point plans, which have been developed by industry under the congressionally-mandated Model Seafood Surveillance Project and are discussed in section C(2) of the ANPRM, may be obtained at no charge from the National Seafood Inspection Laboratory, P.O. Drawer 1207, Pascagoula, MS 39567.

FOR FURTHER INFORMATION CONTACT: Richard Cano, Office of Trade and Industry Services, National Marine Fisheries Service, 1335 East-West

Highway, Silver Spring, MD 20910, 301-427-2355

or

George Hoskin, Center for Food Safety and Applied Nutrition (HFF-400), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-245-1231.

SUPPLEMENTARY INFORMATION: In the Federal Register of June 27, 1990 (55 FR 26334), FDA and NMFS jointly issued an ANPRM announcing their intent to establish a voluntary, fee-for-service inspection program for fish products to be operated by both agencies. The agencies requested that written comments regarding the ANPRM be submitted by August 13, 1990. FDA and NMFS have received requests for a 30-day extension of the comment period for the ANPRM from the National Fisheries Institute, Inc., and the National Food Processors Association to allow for full development and review of their members' comments on this complicated issue. After considering the requests for an extension of the comment period, and because the agencies want to assure that public comment is received to the greatest extent possible, the agencies have determined that extension of the comment period is appropriate. Thus, FDA is reopening the comment period to give interested persons until October 5, 1990 to submit additional comments.

Thomas J. Billy, Acting Director, Office of Trade and Industrial Services, National Marine Fisheries Service, has informed FDA that he concurs with the wording and issuing of this notice.

Dated: August 29, 1990.

Ronald G. Chesebore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 90-20792 Filed 9-4-90; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 635

[FHWA Docket Nos. 81-1 and 85-7]

RIN 2125-AA19

Engineering and Traffic Operations; General Material Requirements

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Withdrawal of advance notice of proposed rulemaking (ANPRM) and notice of proposed rulemaking (NPRM).

SUMMARY: The FHWA is withdrawing

an NPRM published on January 30, 1981, at 46 FR 9642, and an ANPRM published on January 30, 1985, at 50 FR 4234. Both rulemaking actions addressed the specification of materials to be used on Federal-aid highway projects. The 1985 ANPRM specifically addressed how the use of warranties and guarantees would affect the quality of construction and competition on Federal-aid projects. Currently, innovative contracting practices, including product and material selection, are being evaluated under a special experimental project. Upon completion of the project, the FHWA will determine if revisions to the existing regulations are needed. The 1981 and 1985 proposed rulemaking actions are being withdrawn because any further revisions would necessitate the publication of a more current proposal based on data gained from the experimental project.

FOR FURTHER INFORMATION CONTACT:

Mr. William A. Weseman, Chief, Construction and Maintenance Division, Office of Highway Operations, 202-366-0392, or Mr. Michael J. Laska, Office of Chief Counsel, 202-366-1383, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC, 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday.

SUPPLEMENTARY INFORMATION: The notice of proposed rulemaking (NPRM) published on January 29, 1981, (46 FR 9642) (Docket 81-1), proposed to consolidate, revise, and streamline FHWA policy and procedures with regard to specifying materials for use on Federal-aid highway projects. Only 5 public comments were received for this NPRM. These comments were discussed in the advance notice of proposed rulemaking (ANPRM) which was published on January 30, 1985, (50 FR 4234) (Docket 85-7). The 1985 ANPRM noted the limited response to the 1981 NPRM and specifically requested further comments on the issue of warranty and guaranty clauses in Federal-aid highway projects.

Docket 85-7 received 117 comments on the ANPRM, representing 33 State highway departments, 30 local agencies (counties, parishes, and cities), 15 trade associations, 38 private companies, and 1 individual. The trade associations and general contractors were opposed to any change in policy; however, a few of the specialty contractors (signing and joint sealant) favored the use of expanded warranty and guaranty clauses. The State highway departments' comments were mixed, with comments ranging

from no change needed because they had adequate inspection to one State expressing the desire to try a complete project with a five year warranty on an experimental basis. The local agencies favored expanding the use of warranties and guarantees, especially for traffic control devices.

Recently, the FHWA has established an experimental project on Innovative Contracting Practices. The objective of the experimental project (Special Experimental Project No. 14) is to identify for trial evaluation and documentation, innovative contracting practices which have the potential to reduce life cycle costs to State Highway Agencies while maintaining product quality and an acceptable level of contractor profitability. Through evaluation of new innovative techniques, the FHWA will be in a better position to recommend and promote those found to be cost-effective. Upon completion of the experimental project the FHWA will make an evaluation and determine if any revisions in the existing regulations are needed. Since any further revisions would have to be based on a more current proposal resulting from data gained from the experimental project, the rulemakings published at 46 FR 9642 and 50 FR 4234 are hereby withdrawn.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 635

Government contracts, Grant programs-transportation, Highways and roads.

Authority: 23 U.S.C. 315; 49 CFR 1.48. (Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: August 29, 1990.

T. D. Larson,
Administrator.

[FR Doc. 90-20866 Filed 9-4-90; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[CO-26-89]

RIN 1545-AM49

Consolidated Return Regulations— Coordination With Section 833

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the rules and regulations portion of this issue of the *Federal Register*, the Internal Revenue Service is issuing temporary regulations that add a new § 1.1502-75T(d)(5) of the consolidated return regulations by providing rules relating to the removal of the tax-exempt status of organizations described in section 833 of the Internal Revenue Code. The rules are needed because such organizations are, for taxable years beginning after 1986, includible corporations under section 1504(b). The text of the temporary regulations also serves as the comment document for this notice of proposed rulemaking.

DATES: Written comments and requests for a public hearing must be received by November 6, 1990.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP: T:R (CC:CO-26-89), room 4429, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Jean M. Whalen (Telephone 202-566-3938, not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations published in the Rules and Regulations portion of this issue of the *Federal Register* add a new § 1.1502-75T(d)(5) to part 1 of title 26 of the Code of Federal Regulations. For the text of the new temporary regulations, see T.D. 8310, published in the Rules and Regulations portion of this issue of the *Federal Register*. The preamble to the temporary regulations explains the regulations.

Special Analyses

It has been determined that these proposed rules will not be major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis

is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Administrator of the Small Business Administration for comment on their impact on small business.

Comments and Requests for a Public Hearing

Before these temporary regulations are adopted as final regulations, consideration will be given to any written comments that are submitted (preferably nine copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the *Federal Register*.

Drafting Information

The principal author of these proposed regulations is Jean M. Whalen of the Office of Assistant Chief Counsel (Corporate), Internal Revenue Service. However, other personnel from the Internal Revenue Service and Treasury Department participated in developing the regulations, on matters of both substance and style.

Michael J. Murphy,

Acting Commissioner of Internal Revenue.

[FR Doc. 90-20791 Filed 8-30-90; 11:30 am]

BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[FRL-38-27-7]

Approval and Promulgation of Air Quality Implementation Plans; Oklahoma; Tulsa County Ozone Plan and Redesignation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This notice proposes to approve Oklahoma's post 1982 State Implementation Plan (SIP) revision for attainment of the ozone National Ambient Air Quality Standard (NAAQS) in Tulsa County. This revision was

originally submitted by the Governor on February 20, 1985, with supporting submittals of October 8, 1985, March 31, 1986, May 8, 1989, and March 9, 1990.

These submittals were in response to the February 24, 1984, and May 26, 1988, letters from EPA requesting a SIP revision because Tulsa County failed to attain the ozone standard by December 31, 1982, and 1987, respectively.

EPA is also proposing to approve an updated redesignation request submitted March 23, 1990, for Tulsa County. EPA originally proposed to disapprove a August 9, 1988, request on September 7, 1989, at 54 FR 37132. This notice will discuss EPA's response to the comments received on the September 7, 1989, notice and EPA's proposed action.

DATES: Comments on this action must be received at the EPA Region 6 Office by October 5, 1990. Public comments are requested and will be considered before taking final action.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Planning Section of the EPA Region 6, Air Programs Branch (address below). Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency,
Region 6, Air Programs Branch (6T-AP),
1445 Ross Avenue, Dallas,
Texas 75202.

Oklahoma State Department of Health,
Air Quality Service, 1000 Northeast
10th Street, Oklahoma City,
Oklahoma 73152.

FOR FURTHER INFORMATION CONTACT:
Dr. John Crocker or Mr. Gregg Guthrie,
telephone (214) 655-7214 or (FTS) 255-7214.

SUPPLEMENTARY INFORMATION:

A. Background

Under section 107(d) of the Clean Air Act (CAA), the Administrator of EPA has promulgated the NAAQS attainment status for all areas within each State. On March 3, 1978, at 43 FR 9037 EPA identified Tulsa County, Oklahoma as nonattainment for the ozone NAAQS. In accordance with the requirements of the CAA of 1977 for such nonattainment areas, the State of Oklahoma submitted a SIP revision in April of 1979. The 1979 SIP indicated the ozone standard would be achieved by December 31, 1982. The 1979 Tulsa County SIP revision was conditionally approved on February 13, 1980, at 45 FR 9733. After additional submittals by the Oklahoma State Department of Health (OSDH), EPA removed the conditions on the 1979

ozone plan revision on November 28, 1980, at 45 FR 79051. The approved revision included the adoption of the required Set I and Set II stationary source regulations which reflected the application of reasonably available control technology (RACT). Because the 1979 SIP predicted attainment by December 31, 1982, these RACT regulations were required for major sources only.

Violations of the ozone NAAQS continued during 1983. Consequently, on February 24, 1984, EPA issued a letter to the Governor of Oklahoma calling for a revision to correct the inadequacy of the existing SIP. As a Post-1982 nonattainment county, EPA required the adoption of regulations specified in the Group I, II and III Control Techniques Guideline (CTG) documents for both major and minor sources located in the County. The State was also required to adopt regulations for non-CTG major sources of VOC, implement a vehicle Inspection/Maintenance program and submit a demonstration of attainment.

On February 20, 1985, the Governor of Oklahoma, submitted a SIP revision designed to achieve the ozone standard in Tulsa County. Supplemental information was submitted on August 23, 1985, January 21, June 2, September 2, and December 22, 1986. On July 20, 1985, the Oklahoma Department of Public Safety (DPS) submitted the proposed anti-tampering regulation for Tulsa County to EPA. The DPS conducted a public hearing on the proposed anti-tampering program on May 7, 1985. The final anti-tampering regulation was submitted to EPA by the Governor on October 8, 1985.

On March 31, 1988, the Governor of Oklahoma submitted Oklahoma Air Pollution Control Regulation (OAPCR) 3.7.5-4(b)(2), "Storage of Volatile Organic Compounds 400-40,000 gallons (9.5-953 bbls)" (i.e., stage 1 vapor recovery regulation).

Because 1984-1986 monitoring data did not demonstrate attainment of the ozone NAAQS, the Tulsa metropolitan statistical area (MSA) was identified as a potential 1988 SIP Call area in appendix A of the proposed Post-1987 Ozone/Carbon Monoxide strategy that was published in the Federal Register on November 24, 1987. EPA issued a Phase I SIP Call for the Tulsa MSA on May 26, 1988, since the 1985-1987 ambient monitoring data continued to reveal the area as nonattainment with a calculated expected exceedance rate of 1.1 per year. As a Phase I SIP Call area, the State was required to correct deficiencies and inconsistencies in their existing SIP, complete the adoption of regulations previously required under

part D of the CAA, and begin updating their emission inventory to reflect current emission levels in the Tulsa MSA.

On May 8, 1989, the Governor of Oklahoma submitted a revised OAPCR 3.7.5-4(i)(3) "Transport/Delivery Vessel Requirements" to control leaking gasoline tank trucks in Tulsa County.

On March 9, 1990, the Governor of Oklahoma submitted four new regulations and several miscellaneous changes to the existing SIP approved regulations in Tulsa County.

B. Plan Review

The control strategy for attainment of the ozone NAAQS in Tulsa County was prepared by the OSDH. The OSDH is the agency designated by the State as the principal authority for air pollution control matters in Oklahoma. The Indian Nations Council of Governments (INCOG) is the designated planning agency to develop the transportation portion of the SIP in Tulsa County.

EPA reviewed the submittals and developed a Technical Support Document (TSD)¹. This document is available for inspection by interested parties during normal business hours at the locations listed in the ADDRESSES section of this notice.

The ozone SIP submittals for Tulsa County were reviewed by EPA in accordance with the requirements of the CAA and the January 27, 1984, Guidance Document for Correction of part D SIPs in Nonattainment Areas. The results of that review are contained in this notice and the TSD cited previously in this notice.

C. Strategy

EPA's decision that Tulsa County would be unable to demonstrate compliance with the ozone NAAQS was based on review of 1981 through 1987 ambient ozone monitoring data in the National Aerometric Data Bank (NADB). Tulsa County experienced 5 exceedances of the ozone NAAQS in 1981; 5 exceedances in 1982; 6 exceedances in 1983; 4 exceedances in 1984; 3 exceedances in 1985; 3 exceedances in 1986; none in 1987; 2 exceedances in 1988; and one in 1989. Only one expected exceedance of the ozone NAAQS per monitoring site per year is allowed. Ozone is formed primarily from emissions of nitrogen oxides and volatile organic compounds (VOCs). Normally VOC emissions are controlled to reduce ozone

¹ Technical Support Document for EPA's Review of the Oklahoma Ozone SIP revision for Tulsa County, May 1990.

concentrations. A modeling analysis to determine the percent reduction needed was performed by the State and verified by EPA ².

The OSDH developed control measures based on the 12 percent reduction requirements. EPA is proposing to approve the control strategy.

D. Data and Modeling Analysis

EPA reviewed and verified the State's EKMA Level III (i.e., city-specific) modeling analysis for Tulsa County, titled "Level III City-Specific Ozone Modeling Analysis for Tulsa, Oklahoma" dated January 17, 1986. Adequate supporting documentation was provided for all of the EKMA/OZIPM-2 model input parameters. The EPA agrees with the State's demonstration of a VOC reduction requirement of 12 percent estimate results from modeling a design day value of 0.128 ppm for July 13, 1984.

EPA is proposing to approve the modeling analysis.

E. Stationary Source Control

For the Tulsa County ozone nonattainment area, EPA requires the stationary source portion of the SIP to contain legally enforceable regulations which reflect the application of RACT for the following sources: (1) All sources of VOC covered by a CTG document published by EPA, and (2) all remaining sources of VOCs with the potential to emit 100 TPY or more.

EPA has published three series of CTG documents, (i.e., Set I, Set II, and Set III). The OSDH submitted RACT regulations for Set I and Set II CTG source categories on April 2, 1979, and April 11, 1980. EPA approved the submittals on February 13, 1980, at 45 FR 9733, November 28, 1980, at 45 FR 79,051, and April 13, 1982, at 47 FR 15795. These actions represented a successful

completion of the 1979 ozone SIP requirements in Oklahoma.

EPA is today proposing approval of six new regulations and several amendments to the existing regulations for Tulsa County. One new regulation in the February 20, 1985 submittal, the one new regulation contained in the May 8, 1989, submittal, and four of the five new regulations in the March 9, 1990, submittal are proposed for approval in this notice. The February 20, 1985, submittal contained two additional regulations that have since been superseded by the May 8, 1989, and March 9, 1990, submittals. The one remaining new regulation in the March 9, 1990, submittal (OAPCR 3.7.5-4(h) and its corresponding Oklahoma Commissioner of Health Orders) was approved in a separate notice on June 12, 1990, at 55 FR 23730.

Other CTG source categories are not covered by regulation because there are no sources located in Tulsa County that meet the category applicability criteria in the CTG documents. The OSDH documented this in the March 9, 1990, submittal by listing each CTG document and its corresponding regulation or negative declaration letter.

The State has also committed, in an October 17, 1989, letter, to develop and incorporate test methods into OAPCR 3.7 for determining the capture efficiency of control devices associated with coating operations. EPA issued final guidance for development of these test methods on April 16, 1990, (see "Guidelines for Developing Capture Efficiency Protocols"). During the next grant year the State will study the guidance and begin its rulemaking process.

Therefore, EPA is proposing to approve the stationary source portion of the Tulsa County ozone SIP since it contains RACT regulations for all VOC sources covered by the CTG document and for all those not covered by the CTG document with a potential to emit of 100 TPY or more.

F. Specific Stationary Source Regulations

The February 20, 1985, ozone SIP submittal contained three revised regulations in OAPCR 3.7. Two of those regulations have been superseded by subsequent submittals. The May 8, 1989, submittal replaces the gasoline tank truck regulation submittal. The stage 1 vapor recovery regulation submittal was superseded twice, once by the March 31, 1986, submittal and then by the March 9, 1990, submittal.

The May 8, 1989, SIP submittal contained one new regulation, OAPCR

3.7.5-4(i)(3) for gasoline tank trucks in Tulsa County. This submittal supersedes the gasoline tank truck regulation of the February 20, 1985 submittal. Specific new regulations for Tulsa County in the March 9, 1990, ozone SIP submittal are OAPCR 3.7.5-4 (g), (h), (i) and (j). OAPCR 3.7.5-4 (g) and (h) are new surface coating regulations. OAPCR 3.7.5-4(i) is for controlling VOCs from vapor recovery systems in the petroleum marketing industry and OAPCR 3.7.5-4(j) is for controlling VOCs from the manufacture of fiberglass products.

EPA has identified specific items in two of the State's regulations that will require amendments. EPA informed the State these involve a total of four items, dealing with Commissioner's equivalent determinations in OAPCR 3.7.5-4(g) and OAPCR 3.7.5-4(i)(3), requiring amendments. Three of the items, in sections 3.7.5-4(g)(9)(A), 3.7.5-4(i)(3)(B)(1) and 3.7.5-4(i)(3)(B)(3), deal with equivalent test methods and the fourth in 3.7.5-4(g)(7)(A)(i)(b) is an equivalency provision originally intended for allowing equivalent control equipment. The State has agreed to enter into a memorandum of understanding (MOU) with EPA. The MOU will include a commitment to amend the regulations as expeditiously as possible but no later than one year from execution of the MOU, and that any equivalent methods approved by the Commissioner, prior to the regulations amendment, will be forwarded to EPA as SIP revisions. That MOU must be finalized before taking final action and will be approved as part of the SIP.

1. Vapor Recovery Systems—Stage 1 Vapor Recovery

OAPCR 3.7.5-4(i)(1) "Storage of Volatile Organic Compounds 400-40,000 Gallons (9.5-953 bbls)" for Tulsa County was originally submitted as OAPCR 3.7.5-4(b)(2) on February 20, 1985, and again on March 31, 1986. The State resubmitted and renumbered this regulation in its March 9, 1990, submittal as 3.7.5-4(i)(1).

EPA reviewed the regulation against the CTG document "Design Criteria for Stage 1 Vapor Control Systems Gasoline Service Stations" and its policy memorandum dated August 17, 1979, titled "Evaluation of 10,000 Gallons Per Month Throughput Exemptions for Petroleum Marketing Operations."

The regulation as revised provides that the most restrictive of the following determine applicability (1) a 120,000 gallons per year or more throughput, or (2) a tank size of 2,000 gallons or more. Also, once a source has become subject to the regulation, it remains subject.

² The city-specific Level III modeling approach used to determine VOC reductions needed was the Empirical Kinetic Modeling Approach (EKMA/OZIPM-2). The State used a 17.6 modeling ratio for nonmethane hydrocarbons to nitrogen oxides (NMHC/NO_x). Modeling using the 17.6 value showed that the VOC reduction needed to bring Tulsa County into attainment by 1987 was 12 percent of the 1984 emissions level. The 1984 emissions inventory shows the VOC breakdown as 28 percent from stationary sources and 72 percent from mobile sources. The revision demonstrated that the implementation of the anti-tampering program along with the continuation of the Federal Motor Vehicle Control Program (FMVCP) would reduce the overall VOC emissions by 16.4 percent by December 31, 1987. The actual reduction needed to attain the O₃ standard in Tulsa County is 12 percent. The State plan anticipated a 19.7 percent total VOC reduction by December 31, 1987, through control of stationary sources, the FMVCP, and maintenance requirements of the emission control equipment on most motor vehicles in the County.

In addition, OAPCR 3.7.5-4(i)(1) provides test methods and requires facilities to obtain certification that the tank trucks delivering products have been certified leak tight by OAPCR 3.7.5-4(i)(3).

The State predicted that OAPCR 3.7.5-4(i)(1) would result in a 95 percent decrease (1,280 tons) of VOCs for service station loading (Stage 1) and an 80 percent decrease (150 tons) for Gasoline Bulk Plants. This would reduce overall VOC emissions by 3.8 percent by December 31, 1987.

2. Vapor Recovery Systems—Loading of Volatile Organic Compounds

OAPCR 3.7.5-4(i)(2) "Loading of Volatile Organic Compounds" for Tulsa County was submitted by the Governor on March 9, 1990, in response to EPA's May 26, 1988, SIP Call letter.

EPA reviewed OAPCR 3.7.5-4(i)(2) against the requirements of appendix D titled "Discrepancies and Inconsistencies Found in Current SIP's" of the November 24, 1987, Federal Register notice, at 52 FR 45105, and the EPA document titled "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to appendix D of November 24, 1987 Federal Register" dated May 25, 1988.

The State's original loading regulation (OAPCR 3.7.5-4(b)(3)), applied to both Oklahoma and Tulsa Counties. EPA originally approved this regulation as OAPCR 15.523 on February 13, 1980, at 45 FR 9733. OAPCR 15.523 was subsequently renumbered as OAPCR 3.7.5-4(b)(3) and continues to apply in Oklahoma County. On March 9, 1990, an amended OAPCR 3.7.5-4(b)(3) was submitted as OAPCR 3.7.5-4(i)(2) specifically for Tulsa County.

Amendments to the existing approved regulation include adding section (G) which adopts NSPS reference method 21 for detecting leaks from vapor recovery systems, and the condition that if a leak greater than 5000 ppm is found it must be repaired within 15 days. Records of the inspections and repairs must be maintained for two years.

3. Vapor Recovery Systems—Gasoline Tank Trucks

OAPCR 3.7.5-4(i)(3) "Transport/Delivery Vessel Requirements" for Tulsa County was submitted by the Governor on May 8, 1989, in response to EPA's May 26, 1988, SIP Call letter.

The State's original gasoline tank truck regulatory revision (OAPCR 3.7.5-4(b)(4)), submitted February 20, 1985, in response to the EPA's SIP call of February 24, 1984, applied to both Oklahoma County and Tulsa County. Since Oklahoma County was not under

the 1988 ozone SIP call (it achieved attainment by December 31, 1982), the State chose to write a new regulation specific to Tulsa County. Sources in Oklahoma County remain subject to OAPCR 3.7.5-4(b)(4).

EPA reviewed the new regulation against the CTG document "Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection Systems" (EPA 450/2-78-051).

OAPCR 3.7.5-4(i)(3) contains the necessary requirements so that it represents RACT. The new regulation requires: (1) The requirement for an annual certification that the tank truck is leak tight; (2) a requirement that each truck have a sticker identifying the tank and the date it was last tested; and (3) the test method for certification is identified as the pressure and vacuum test.

4. Surface Coating of Metal Parts and Products

OAPCR 3.7.5-4(g) "Coating of Parts and Products" was submitted by the Governor on March 9, 1990, in response to EPA's May 26, 1988, SIP call letter.

The State's existing surface coating regulation (OAPCR 3.7.3(a) "Coating of Parts and Products") applies statewide. Since the remainder of Oklahoma was not under the 1988 ozone SIP call, the State chose to adopt a new regulation specific to Tulsa County (i.e., OAPCR 3.7.5-4(g)).

EPA reviewed the regulation against the CTG document "Surface Coating of Miscellaneous Metal Parts and Products" (EPA 450/2-78-015). OAPCR 3.7.5-4(g) contains requirements so that it mirrors the CTG document. Sources may comply with the regulation by either meeting the coating limitations on a daily weighted average or installing control equipment. If control equipment is chosen, the equipment must meet an overall efficiency of 85 percent and reduce emissions to the level that would result from the use of coatings that meet the limitations of the regulation. Compliance is determined through material data sheets listing the VOC content and EPA reference method 24 found at 40 CFR part 60, appendix A. EPA has determined that the regulation represents RACT as discussed in the CTG and is therefore proposing approval.

5. Petroleum (Solvent) Dry Cleaning

OAPCR 3.7.5-4(f) "Petroleum (Solvent) Dry Cleaning" for Tulsa County was submitted on February 20, 1985, in response to the February 24, 1984 SIP call. EPA reviewed the regulation against the SET III CTG

document "Large Petroleum Dry Cleaners" (EPA 450/3-82-009). EPA's review of the regulation indicated that it did not contain a specific emission limitation and is a housekeeping regulation.

The CTG document recommends specific emission limitations. The State submitted a negative declaration by a September 2, 1988, letter demonstrating that the facilities in Tulsa County are smaller than those recommended for control in the CTG document. The CTG document recommended controlling sources which consume 123,000 liters (32,500 gal.) of solvent or more annually. The dry cleaners in Tulsa County consume significantly less than the recommended CTG cutpoint (i.e., 32,500 gal.). The Tulsa dry cleaners as a whole consume approximately 35,000 gallons per year, the largest of which consumes about one third of the 35,000 gallons.

However, because OAPCR 3.7.5-4(f) will lead to added reductions in Tulsa County, EPA is proposing to approve OAPCR 3.7.5-4(f) under part A section 110 of the CAA. However, this regulation is not being proposed as representing RACT under part D section 172 of the CAA.

6. Manufacture of Fiberglass Parts and Products

OAPCR 3.7.5-4(j) "Manufacture of Fiberglass Parts and Products" in Tulsa County was submitted by the Governor on March 9, 1990, in response to EPA's May 26, 1988, SIP call. EPA has no CTG document for this source category, but has reviewed the regulation against the general guidance for development of 100-TPY non-CTG Source regulations.

OAPCR 3.7.5-4(j) requires sources to either: (1) Install control equipment by February 12, 1991, which will achieve 85 percent overall control from individual operations emitting greater than six tons of VOS per year based on 6240 hours per year, or (2) develop a plan, to be submitted 6 months prior to the compliance date, for reducing emissions to the level equivalent to that obtained by application of item (1) above. The second requirement was developed in the anticipation that the source could replace or reformulate its current solvent to allow reduced usage, thereby minimizing the VOC emissions to the atmosphere.

Tulsa County has only one source subject to the requirements of the regulation. EPA has reviewed OAPCR 3.7.5-4(j) and is proposing to find that it represents RACT for this source category and is therefore proposing approval.

7. Miscellaneous Changes to OAPCR 3.7

In response to EPA's May 26, 1988, SIP call, the OSDH has made numerous miscellaneous changes to OAPCR 3.7 "Control of Emissions of Organic Materials". These changes were submitted by the Governor on March 9, 1990. The majority of the amendments are found in OAPCR 3.7.5 "Non-Attainment Areas: Additional Controls Required". EPA reviewed OAPCR 3.7.5 against the requirements of Appendix D titled "Discrepancies and Inconsistencies Found in Current SIP's" of the November 24, 1987, Federal Register notice, at 52 FR 45105, and the EPA document titled "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987 Federal Register" dated May 25, 1988. Both documents are treated as supplements to the May 26, 1988, SIP call.

The regulations were amended in the following manner:

The term *Director* was replaced with *Commissioner* throughout OAPCR 3.7 to make it consistent.

OAPCR 3.7.1(b) *Definitions* was amended by deleting the definition of "organic solvent" and adding a definition of Volatile Organic Solvent (VOS). This definition closely follows EPA's guidance on the definition of VOC.

OAPCR 3.7.5-2(a) *Petroleum Refinery Equipment Leaks* was amended to: (1) Remove the major source exemption; (2) remove Commissioner discretion from sections (a)(1)(B)(i), (a)(5)(A), (a)(6)(A)(i), and (a)(9); (3) require inaccessible valves to be monitored during annual shutdown; (4) lower the monitoring exemption level to 0.3 psi; (5) require all lines or pipes terminating with a valve to be sealed with a second valve, a blind flange, a plug or a cap; (6) replace the testing method with Method 21 of 40 CFR part 60; (7) require quarterly monitoring reports rather than semiannual; (8) require leaking components to be repaired and retested within 15 days rather than 30 days; and (9) require all pump seals to be visually monitored on a weekly basis rather than monthly.

OAPCR 3.7.5-2(b) *Refinery Process Unit Turnaround* was amended to: (1) Define the term "turn around"; and (2) eliminate venting to the atmosphere until the pressure is reduced to less than 5 psig through control devices.

OAPCR 3.7.5-2(c) *Refinery Vacuum Producing System* was amended to: (1) Define the terms "Accumulator", and "Hotwell"; (2) require test reports and maintenance records to be maintained

for two years; (3) require flares to be continuously monitored for the presence of a flame; and (4) specify test methods from appendix A of 40 CFR part 60.

OAPCR 3.7.5-3(a) *Petroleum Liquid Storage in External Floating Roof Tanks* was amended to require semi-annually visible inspections for holes, tears, or other openings in the seals or seal fabric.

OAPCR 3.7.5-4(b)(1) *Storage of Volatile Organic Compounds—Greater than 40,000 gallons (953 bbls)* was amended to: (1) Require closure seals to meet the requirements of OAPCR 3.7.5-3(a)(3)(A)(ii); (2) delete the 90 percent reduction requirement for the vapor recovery systems and replace it with an emission limitation of 80 mg/liter of gasoline transferred.

OAPCR 3.7.5-4(c) *Metal Cleaning* was amended to: (1) Define the term "freeboard"; (2) require test methods and two year recordkeeping; (3) replace the term "facility" with "unit"; (4) add test methods of 40 CFR part 60, appendix A; and (5) require test reports and maintenance records be maintained for two years. In addition, section three concerning conveyorized degreasers was amended by adding requirements for major control devices and safety switches for degreasers with a air/vapor interface of more than 2.0 m².

OAPCR 3.7.5-4(d) *Graphic Arts Systems* was amended to replace the outdated test method with EPA reference method 24 found at 40 CFR Part 60, appendix A.

EPA is proposing to approve the six new stationary source regulations and the amendments to the existing stationary source regulations for Tulsa County.

G. New Source Review

Oklahoma's requirements listed in OAPCR 1.4 (Air Resources Management: Permits Required) in general as well as the specific requirements of section 1.4.5(c), (d), and (e) (under 1.4.5 Major Sources-Nonattainment Areas), will ensure that the emissions from new sources should not exceed the growth allowances. Should the growth allowances be consumed, OAPCR 1.4 will require emission offsets to ensure no emission increases before new sources or major modifications could be approved for construction. The new source review program also requires the application of lowest achievable emission rate (LAER) technology. EPA approved OAPCR 1.4.5 on May 18, 1983, at 48 FR 22297.

H. Transportation Control Measures

The February 20, 1985, submittal included a transportation control plan

(TCP) designed to reduce VOC mobile source emissions. The TCP included a commitment to implement or continue operation of the following transportation control measures (TCMs):

- Improved Transit
- Park and Ride
- Ridesharing
- Traffic Flow Improvements

These transportation provisions were recommended for inclusion in the SIP by the Indian Nations Council of Governments (INCOG) on July 13, 1984. TCMs identified by INCOG were analyzed in detail in a document titled, *Evaluation of Transportation Control Measures*. This document was prepared by INCOG and submitted to all appropriate review, approval, and endorsement committees. TCMs identified as reasonably available for implementation in Tulsa County were recommended to OSDH for inclusion in the SIP. OSDH incorporated the recommended TCMs with the other portions of the SIP and conducted a public hearing in Oklahoma City, Oklahoma on January 15, 1985. The TCMs in the plan were selected based on the results of an analysis by INCOG of the 18 measures listed in section 108(f) of the 1977 CAA. The TCMs are designed to reduce automobile emissions by reducing vehicle miles traveled (VMT) through greater use of public transit, park and ride, and ridesharing. The INCOG report³ on the TCM evaluation provides the rationale for selection or rejection of each TCM. The recommended TCMs were projected to reduce automobile emissions by 362 tons by 1987.

EPA is proposing to approve the above discussed TCMs.

I. Vehicle Inspection and Maintenance (I/M)

The State of Oklahoma has implemented an anti-tampering program⁴ in Tulsa County, Oklahoma. The Tulsa I/M program places emphasis on the reduction of excess emissions resulting because of tampering or misfueling of vehicles. The program includes an annual vehicle inspection for tampering and misfueling, a

³ *Evaluation of Transportation Control Measures*, Indian Nations Council of Governments, November 1982.

⁴ The Oklahoma State legislature passed House Bill No. 13889 which authorizes an anti-tampering program. On July 20, 1985, the Oklahoma Department of Public Safety submitted their proposed anti-tampering regulation. The DPS conducted a public hearing on the proposed anti-tampering program on May 7, 1985. On October 8, 1985, the Governor submitted the final DPS anti-tampering regulation for Tulsa County.

mechanic training program, a public awareness program, and enforcement of State regulations against tampering and misfueling. It also includes a visual check of the components of the vehicle emission control systems and a tailpipe test to detect lead in vehicles requiring unleaded gasoline.

EPA's Mobile 3 model indicated that the mobile source program would reduce automobile hydrocarbon emissions by 26.2 percent, meeting the minimum emission reduction requirement for a 25 percent reduction in light duty vehicle emissions. Therefore, EPA is proposing to approve the anti-tampering regulation as RACT.

J. I/M Program Description

The Oklahoma I/M program consists of the following segments:

- 1—An annual inspection of vehicles for tampering of the emission control systems or fuel-switching, and a repair requirement to correct any deficiencies before an inspection sticker is issued.
- 2—A Public Information Program.
- 3—An Inspector Training Program.
- 4—Active enforcement of the inspection requirement.
- 5—Certification of stations and inspectors.
- 6—An effective quality control program over the inspections and recordkeeping.

The anti-tampering program was implemented on January 1, 1986, and it is conducted in conjunction with the annual vehicle safety inspection program administered by the Department of Public Safety (DPS). The legal authority for the anti-tampering program is contained in section 856 of title 47 of the Oklahoma Statutes. Section 854 authorizes and directs the Commissioner of the DPS to make the necessary rules and regulations for the administration and enforcement of the anti-tampering inspection program.

The vehicle inspection requirement applies to all 1979 and later model year gasoline powered automobiles and trucks up to 8500 pounds gross vehicle weight owned and operated in the program area. The visual inspection is designed to identify any evidence of tampering or obvious need for service. The presence of lead in cars which should be using unleaded fuel, will also be checked.

The visual check includes the following components:

- Catalytic converter systems;
- Fuel inlet restrictor;
- Evaporative emissions system;
- Air injection systems;
- Positive crankcase ventilation system;
- Oxygen sensor;
- Thermostatic air cleaner; and
- Exhaust gas recirculation system.

Lead sensitive test paper is used to detect lead in the tailpipe of vehicles requiring unleaded fuel. The vehicle will fail inspection if any emission control component is missing, disconnected or shows evidence that tampering has occurred or, if the lead detection test reveals lead in the tailpipe of a vehicle requiring unleaded fuel. Vehicles that fail the catalyst, fuel inlet restrictor, or lead detection test must replace the catalyst before being reinspected. Vehicles that fail any item of the inspection will have to be repaired by a mechanic of the owner's choice and returned for reinspection within thirty (30) days. If the vehicle passes reinspection, then a certificate of inspection will be issued.

The DPS rules and regulations require "proper replacement" of tampered or missing items. The State has submitted a written interpretation by the DPS dated June 26, 1987, of the term "proper replacement" in § 856.1(C) of the Oklahoma statutes to mean "original equipment manufacturer (OEM) or equivalent". The catalytic converter may be replaced by an OEM or an EPA approved aftermarket catalytic converter.

The annual anti-tampering inspection requirement will be enforced through a windshield sticker system. Vehicles subject to the anti-tampering inspection will display a larger and different colored windshield sticker than vehicles subject only to the safety inspection. The sticker will also have the word "EMISSION" across the front.

Although the program will be enforced by State, County and City Police Departments, primary enforcement will rest with the Tulsa City Police Department. The City of Tulsa has adopted the State's regulation and citations can be issued with a maximum penalty of \$500 to owners operating non-complying vehicles. The Tulsa City Police Department has committed to aggressively enforce the anti-tampering program. When a citation is issued, the owner has fifteen (15) days to secure a proper inspection.

The rules and regulations manual requires vehicles owned and operated in the program area to be inspected in that area. All inspection stations, statewide, are required to verify the residence of the vehicle owner prior to conducting an inspection. This will be accomplished by checking the owner's driver's license and the certificate of insurance. The insurance certificate was determined to be the best method of verifying residence since State law requires the certificate to be carried at all times and it must be renewed every six months. If a vehicle subject to the program is

presented for inspection outside the program area, the inspection station will not inspect the vehicle and will inform the owner that the vehicle must be inspected in the program area.

A vehicle which has failed an inspection will be easily identified by law enforcement officers since the sticker will be marked with a large "X". Inspection stations are required to remove stickers which have expired when the vehicle is presented for inspection. If the sticker has not expired and the vehicle failed the inspection, it will be marked with an "X". All motorists have the right to appeal to the DPS any rejection certificate issued within seven days. When an inspection decision is appealed, the DPS will reinspect the vehicle within 30 days.

The DPS has trained all inspectors in the I/M program area. The training consists of inspecting the emission control systems and detecting tampering and misfueling. To be certified, an inspector must complete the prescribed training and pass a written test. Inspectors may not transfer from one station to another without being recertified and they are subject to reexamination at any time.

Each inspection station will be visited by a DPS trooper at least once every two months. The trooper will audit the records to ensure that the stickers are accountable and he will observe inspections to ensure compliance with the proper procedures. If deviations are noted, the station and/or inspector is subject to suspension or revocation of license or recertification by the DPS. Any station operator or inspector who is convicted of a violation is subject to a fine of up to \$500 and/or imprisonment for not more than 30 days. As committed in a January 16, 1990, letter, the DPS will annually conduct unannounced visits to 10 percent of the Tulsa inspection stations in unmarked cars driven by troopers in civilian clothes to insure that inspections are being properly conducted. The January 16, 1990, letter states that a minimum of six inspections will be accomplished each calendar quarter. The DPS will also investigate all complaints received from the public with regard to inspection stations or inspectors.

The I/M plan does not contain recordkeeping or record submittal commitments. The State will need to commit to report semiannually to EPA, information relating to the effectiveness and enforcement of the I/M program. Items to be reported shall include, at a minimum: (1) The approximate number of vehicles to be inspected based on vehicle type, age, fuel type, (2) the

number of vehicles receiving and passing initial inspections, (3) the number of vehicles failing the initial inspection, (4) the number passing after repair, (5) the number failing for each emission control device, (6) the number of inspection stickers issued. The state will also be committed to report data concerning inspection facilities. Data to be reported shall include: (1) The number of facilities licensed to perform inspections, and (2) the number of facility licensees and inspector certificates suspended and revoked. The State will need to commit, during the public comment period of this notice, to collect and submit semiannual reports of the above discussed data before EPA will finalize approval of the Tulsa County Post 1982 ozone SIP.

A public information program was implemented by the OSDH. Periodic new releases began in March 1985, increased near the program start date of January 1986 and continued into that year. Press kits were prepared and distributed in April 1985 and public service announcements on the radio and television began in May 1985. A brochure, which explains the program, was distributed in June 1985. A brochure, which explains the program, was distributed in June 1985 by the DPS and the OSDH. Other activities during the month of October 1985 were free tampering inspections and the distribution in residential water bills of notices which discussed the tampering inspection program and the health effects of automobile emissions. The anti-tampering vehicle inspection program was implemented on January 1, 1988.

K. Reasonable Further Progress (RFP)

The Reasonable Further Progress (RFP) curve submitted with the Tulsa Post 82 ozone SIP predicted sufficient reductions would be achieved to attain the ozone NAAQS. The curve showed that a decrease of 7,467 tons of VOC or 19.7 percent would occur in Tulsa County between 1984 and 1987. The OSDH demonstrated that a 12 percent decrease of VOCs (i.e., 4,538 tons) was required to attain the ozone standard. The RFP report projected an attainment date of December 31, 1986. Since December 31, 1987, no violations of the ozone NAAQS have occurred in Tulsa County.

The RFP curve demonstrated that predicted reductions would be achieved with the implementation of OAPCR 3.7, the continuation of the Federal Motor Vehicle Control Program, and implementation of the I/M program.

The State has also committed to report annually on how the stationary

source regulations and the I/M program contribute to reasonable further progress. These reports have been submitted by the State for years 1986 through 1988 and indicate that RFP as being met during those years.

L. Redesignation

1. Background

Under section 107(d) of the Clean Air Act (CAA), the Administrator of EPA has promulgated the NAAQS attainment status for all areas within each State. These area designations may be revised whenever sufficient data become available to justify a redesignation. On March 3, 1978, at 43 FR 8962 EPA identified Tulsa County, Oklahoma as nonattainment for the Ozone NAAQS.

Specific policy criteria for ozone redesignation reviews are given in the following memoranda: a December 7, 1979, memorandum from Richard C. Rhoads former Director of EPA's Control Programs Development Division; an April 21, 1983, memorandum from Sheldon Meyers, former Director of EPA's Office of Air Quality Planning and Standards (OAQPS); and an April 6, 1987, memorandum from Gerald A. Emison Director of OAQPS. In summary, those memoranda indicate that the calculated average number of expected annual exceedances should be less than or equal to 1.0 and determined from the most recent three years of quality assured monitoring data. Also, the observed improvements in air quality must be due to implementation of permanent and enforceable emission control measures. Those memoranda also specify that the State Implementation Plan for the area be fully approved by EPA and finally implemented by the State.

2. Tulsa Redesignation Request

On August 9, 1988, the OSDH submitted a request to redesignate Tulsa County to an attainment status for the ozone NAAQS. This request was based on the most recent, complete, quality assured three years of monitoring data covering calendar years 1985-1987.

EPA proposed to disapprove the State's August 9, 1988, request on September 9, 1989, at 54 FR 37132. On October 27, 1989, EPA extended the public comment period till December 11, 1989, at the request of several commentors. EPA received comments from four commentors on the proposed disapproval. All four comments may be summarized as follows:

Comment: EPA should not finalize the proposed disapproval until the State has had adequate time to collect monitoring

data for calendar year 1989 and make corrections to the existing SIP.

Response: EPA has worked closely with the State in their development of the necessary ozone SIP corrections. During this time period the State has had necessary time to collect ozone monitoring data for calendar year 1989. EPA has reviewed the State's updated request, which includes 1988 data, and based on today's proposed approval of the Tulsa ozone SIP, EPA is also proposing to approve the State's redesignation request (see discussion below on the undated redesignation request).

On March 23, 1990, the OSDH submitted a revised request to redesignate Tulsa County to an attainment status for the ozone NAAQS. This request was based on the most recent, complete, quality assured three years of monitoring data covering calendar years 1987-1989.

These data were collected at three sites within Tulsa County: Site 127 located at 1326 East Mohawk Boulevard, Tulsa, Oklahoma; Site 137 located at 900 South Osage Drive, Skiatook, Oklahoma; and Site 174 located at 502 East 144th Place, South Glenpool, Oklahoma. These sites are located in a north-south line across the county and all sites have experienced exceedances of the ozone standard during the 1987-1989 time frame. The ozone concentrations showing exceedances are summarized below:

TABLE 1.—OZONE CONCENTRATION EXCEEDANCES PER YEAR (PPM)

Site Number	1987	1988	1989
127	none	0.15	none
137	none	0.13	none
174	none	none	0.13

EPA examined the 1987-1989 air quality data and found that they were collected in accordance with all EPA requirements. Sites 127, 137 and 174 each have a maximum calculated annual average expected number of exceedances of 0.37 based on the above data. The data collected reveals the area has reached attainment since EPA requires a 1.0 or lower value for an annual average expected exceedance to demonstrate attainment.

M. Proposed Action

Today, EPA is proposing to approve the SIP revision submittals of February 20, 1985, October 8, 1985, March 31, 1986, May 8, 1989, and March 9, 1990, which include: (1) Amendments to the

stationary source regulations (i.e., Regulation 3.7.5 "Nonattainment Areas—Additional Controls Required"); (2) Transportation Control Measures; (3) the I/M plan with an anti-tampering regulation; and (4) the ozone plan control strategy and modeling analysis.

In addition, based on three or more years of monitoring data that demonstrates attainment of the ozone NAAQS and, based on today's notice, evidence of EPA's proposed approval of the control strategy, EPA is proposing to approve the State's request to redesignate Tulsa County to attainment.

All interested persons are invited to submit written comment on today's proposal. Written comments received by the date specified above will be considered in determining EPA's final action.

Regulatory Process

Under 5 U.S.C. Section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

Under 5 U.S.C. section 605(b), the Administrator has certified that redesignations do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects

40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401-7642.

Dated: August 21, 1990.

Joe D. Winkle,

Acting Regional Administrator.

[FR Doc. 90-20842 Filed 9-4-90; 8:45 am]

BILLING CODE 5580-50-M

40 CFR Part 171

[OPP-250083; FRL-3799-9]

Notification to Secretary of Agriculture of a Proposed Regulation for the Certification of Pesticide Applicators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification to the Secretary of Agriculture.

SUMMARY: Notice is given that the Administrator has forwarded to the Secretary of Agriculture a proposed regulation under section 25 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The proposed rule would revise the rules at 40 CFR part 171 governing the certification of applicators of restricted use pesticides. This action is required by section 25(a)(2)(A) of FIFRA, as amended.

FOR FURTHER INFORMATION CONTACT: John R. MacDonald, Office of Pesticide Programs (H7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1101, CM #2, 1921 Jefferson Davis Highway, Arlington, VA. Telephone: 703-557-7371.

SUPPLEMENTARY INFORMATION: Section 25(a)(2)(A) of FIFRA provides that the Administrator shall provide the Secretary of Agriculture with a copy of any proposed rule at least 60 days prior to signing it for publication in the *Federal Register*. If the Secretary comments in writing regarding the proposed regulation within 30 days after receiving it, the Administrator shall issue for publication in the *Federal Register*, with the proposed regulation, the comments of the Secretary, and the response of the Administrator concerning the Secretary's comments. If the Secretary does not comment in writing within 30 days after receiving the proposed regulation, the Administrator may sign the proposed regulation for publication in the *Federal Register* anytime after the 30-day period. As required by FIFRA section 25(a)(3), a copy of this proposed regulation has been forwarded to the Committee on Agriculture of the House of Representatives, and Committee on Agriculture, Nutrition, and Forestry of the Senate. As required by FIFRA section 25(d), a copy of this proposed regulation has also been forwarded to the Scientific Advisory Panel.

Authority: 7 U.S.C. 136 *et seq.*

Dated: August 27, 1990.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 90-20845 Filed 9-4-90; 8:45 am]

BILLING CODE 5580-50-F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90-390, RM-7176]

Radio Broadcasting Services; Larned, KS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Nancy J. Puopolo, requesting the substitution of Channel 295C1 for Channel 295A at Larned, Kansas. Petitioner also requests modification of her construction permit for Station KYSG to specify operation on Channel 295C1 in lieu of Channel 295A. The coordinates for Channel 295C1 are 38-13-07 and 98-59-14.

DATES: Comments must be filed on or before October 22, 1990, and reply comments on or before November 6, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Nancy J. Puopolo, 37 Martin St., Rehoboth, Massachusetts 02769.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6590.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-390, adopted August 15, 1990, and released August 30, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy-contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contracts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR Section 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing

procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.
Federal Communications Commission.
Kathleen B. Levitz,
Deputy Chief, Policy and Rules Division,
Mass Media Bureau.
[FR Doc. 90-20777 Filed 9-4-90; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-931, RM-7216]

Radio Broadcasting Services; La Monte, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Valkyrie Broadcasting, Inc. proposing the substitution of FM Channel 246C3 for Channel 246A at La Monte, Missouri. Petitioner also requests modification of its construction permit for Channel 246A to specify operation on Channel 246C3. The coordinates for Channel 246C3 are 38-45-09 and 93-18-09.

DATES: Comments must be filed on or before October 22, 1990, and reply comments on or before November 6, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows:

Joey Anderson, Valkyrie Broadcasting Inc., Box 1420, Warsaw, Missouri 65355.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-931, adopted August 17, 1990 and released August 30, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR Section 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List Subjects in 47 CFR Part 73

Radio broadcasting.
Federal Communications Commission.
Kathleen B. Levitz,
Deputy Chief, Policy and Rules Division,
Mass Media Bureau.
[FR Doc. 90-20776 Filed 9-4-90; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-392, RM-7234]

Radio Broadcasting Services; Lometa, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Don Werlinger proposing the allotment of Channel 270A to Lometa, Texas, as that community's first local FM service. Channel 270A can be allotted to Lometa consistent with the Commission's minimum distance separation requirements at coordinates 31-13-14 and 98-21-15. Mexican concurrence is required because Lometa is located within 320 kilometers of the U.S.-Mexican border.

DATES: Comments must be filed on or before October 22, 1990, and reply comments on or before November 6, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Don Werlinger, 7819 Manassas Drive, Austin, Texas 78745 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-392, adopted August 17, 1990, and released August 30, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.
Federal Communications Commission.
Kathleen B. Levitz,
Deputy Chief, Policy and Rules Division,
Mass Media Bureau.
[FR Doc. 90-20775 Filed 9-4-90; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-388, RM-7229]

Radio Broadcasting Services; Crossville, TN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Mountaintop Broadcasters, Inc., permittee of Station WEGB(FM), Channel 273A, Crossville, Tennessee, proposing the substitution of Channel 273C3 for Channel 273A at Crossville, and the modification of its construction permit accordingly to specify operation on the higher powered channel. Coordinates for Channel 273C3 are 36-01-25 and 85-00-06.

DATES: Comments must be filed on or before October 22, 1990, and reply comments on or before November 6, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: William E. Zimsky, Esq., Taylor & Zimsky, 1901 L Street NW., suite 200, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-388, adopted August 15, 1990, and released August 30, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-20779 Filed 9-4-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

(MM Docket No. 90-389, RM-7339)

Radio Broadcasting Services; Monticello, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Markey Broadcasting Co., Inc., requesting the allotment of Channel 259A to Monticello, New York, as the community's second local FM service. Channel 259A can be allotted to Monticello in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.9 kilometers (1.8 miles) west to avoid a short-spacing to Station WWWW, Ellenville, New York. The coordinates for this proposed allotment are North Latitude 41-39-09 and West Longitude 74-43-34. Canadian concurrence is required since Monticello is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

DATES: Comments must be filed on or before October 22, 1990, and reply comments on or before November 6, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant,

as follows: Markey Broadcasting Co., Inc., P.O. Box 1259, Elmira, New York 14902 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-389, adopted August 15, 1990, and released August 30, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-20778 Filed 9-4-90; 8:45 am]

BILLING CODE 6712-01-M

Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

CIVIL RIGHTS COMMISSION

California Advisory Committee to the United States Commission on Civil Rights; Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the California Advisory Committee to the Commission will convene at 9 a.m. and adjourn at 3 p.m. on Saturday, September 15, 1990, at the Holiday Inn, 750 Kearney Street, San Francisco, California 94108. The purpose of the meeting is program and project discussion for fiscal year 1991.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Michael C. Carney or Philip Montez, Director of the Western Regional Division (213) 894-3437, (TDD 213/894-0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC., August 24, 1990.

Wilfredo J. Gonzalez,

Staff Director.

[FR Doc. 90-20816 Filed 9-4-90; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

BACKGROUND: Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930 may request, in accordance with § 353.22 or § 355.22 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

OPPORTUNITY TO REQUEST A REVIEW: Not later than September 30, 1990, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in September for the following periods:

Antidumping duty proceedings	Period
Canada: Replacement Parts for Self-Propelled Bituminous Paving Equipment (A-122-057)	09/01/89-08/31/90
Canada: Carbon Steel Bars & Structural Shapes (A-122-005)	09/01/89-08/31/90
Canada: Steel Jacks (A-122-006)	09/01/89-08/31/90
Canada: Steel Rails (A-122-894)	03/13/89-08/31/90
Italy: Pads for Woodwind Instrument Keys (A-475-017)	09/01/89-08/31/90
Japan: Filament Fabric (A-588-607)	09/01/89-08/31/90
Japan: Metal-Walled Above-Ground Swimming Pools (A-588-058)	09/01/89-08/31/90
The Federal Republic of Germany: Certain Forged Steel Crankshafts (A-428-604)	09/01/89-08/31/90
The People's Republic of China: Greige Polyester/Cotton Printcloth (A-570-101)	09/01/89-08/31/90
The United Kingdom: Certain Forged Steel Crankshafts (A-412-602)	09/01/89-08/31/90

Suspension Agreements	Period
Argentina: Certain Carbon Steel Wire Rod (C-357-004)	01/01/89-12/31/89

Federal Register

Vol. 55, No. 172

Wednesday, September 5, 1990

Suspension Agreements	Period
Peru: Cotton Shop Towels (C-333-401)	01/01/89-12/31/89
Countervailing duty proceedings	Period
Argentina: Certain Welded-Carbon Steel Pipe and Tube Products (C-357-801)	01/01/89-12/31/89
Canada: Fresh, Chilled and Frozen Pork (C-122-807)	05/08/89-03/31/90
Canada: New Steel Rail, Except Light Rail (C-122-805)	03/02/89-12/31/89
Israel: Fresh Cut Roses (C-508-064)	10/01/88-09/30/89
New Zealand: Lamb Meat (C-614-503)	04/01/89-03/31/90
New Zealand: Steel Wire (C-614-601)	07/01/89-06/30/90
Mexico: Portland Hydraulic Cement and Cement Clinker (C-201-013)	01/01/89-12/31/89

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B-099, U.S. Department of Commerce, Washington, DC 20230. Further, in accordance with § 353.31 of the Commerce Regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the *Federal Register* a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review", for requests received by September 30, 1990.

If the Department does not receive by September 30, 1990 a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Dated: August 27, 1990.

Joseph A. Spetrini,
Deputy Assistant Secretary for Compliance.
[FR Doc. 90-20808 Filed 9-4-90; 8:45 am]
BILLING CODE 3510-DS-M

[A-588-058]

Metal-Walled Above-Ground Swimming Pools From Japan; Intent to Revoke Antidumping Finding

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping finding on metal-walled above-ground swimming pools from Japan. Interested parties who object to this revocation must submit their comments in writing not later than September 30, 1990.

EFFECTIVE DATE: September 5, 1990.

FOR FURTHER INFORMATION CONTACT: Dionne Calloway or Richard Rimlinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-1131.

SUPPLEMENTARY INFORMATION:

Background

On September 7, 1977, the Department of Treasury published an antidumping finding on metal-walled above-ground swimming pools from Japan (42 FR 44881). The Department of Commerce ("the Department") has not received a request to conduct an administrative review of this finding for the most recent four consecutive annual anniversary months.

The Department may revoke an order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations (19 CFR 353.25(d)(4)), we are notifying the public of our intent to revoke this finding.

Opportunity to Object

Not later than September 30, 1990, interested parties, as defined in § 353.2(k) of the Department's regulations (19 CFR 353.2(k)), may object to the Department's intent to revoke this antidumping finding.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review by September 30, 1990, in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to revoke by September 30, 1990, we shall conclude that the finding is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d).

Dated: August 29, 1990.
Joseph A. Spetrini,
Deputy Assistant Secretary for Compliance.
[FR Doc. 90-20807 Filed 9-4-90; 8:45 am]
BILLING CODE 3510-DS-M

Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes, Hospital for Special Surgery, et al.

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 2841, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 90-076. **Applicant:** Hospital for Special Surgery, New York, NY 10021. **Instrument:** Electron Microscope, Model CM12. **Manufacturer:** N.V. Philips, The Netherlands. **Intended Use:** See notice at 55 FR 20502, May 17, 1990. **Order Date:** January 19, 1990.

Docket Number: 90-081. **Applicant:** University of California, Center for Quantized Electronic Structures, Santa Barbara, CA 93106. **Instrument:** Electron Microscope, Model JEM-1200EXII. **Manufacturer:** JEOL, Ltd., Japan. **Intended Use:** See notice at 55 FR 20503, May 17, 1990. **Order Date:** March 23, 1990.

Docket Number: 90-086. **Applicant:** U.S. Army Electronics Technology and Devices Laboratory, Fort Monmouth, NJ 07703. **Instrument:** Electron Microscope, Model JEM 2010. **Manufacturer:** JEOL, Ltd., Japan. **Intended Use:** See notice at 55 FR 21420, May 24, 1990. **Order Date:** December 20, 1989.

Docket Number: 90-093. **Applicant:** The University of Texas at El Paso, El Paso, TX 69968-0505. **Instrument:** Electron Microscope, Model H-8000. **Manufacturer:** Nissei Sangyo, Japan. **Intended Use:** See notice at 55 FR 28080, July 9, 1990. **Order Date:** October 30, 1989.

Docket Number: 90-096. **Applicant:** St. Jude's Children's Research Hospital, Memphis, TN 38101. **Instrument:** Electron Microscope, Model JEM 1200EXII. **Manufacturer:** JEOL, Ltd., Japan. **Intended Use:** See notice at 55 FR 28080, July 9, 1990. **Order Date:** March 30, 1990.

Comments: None received. **Decision:** Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. **Reasons:** Each foreign instrument is a convention transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument or at the time of receipt of application by the U.S. Customs Service.

Frank W. Creel,
Director, Statutory Import Programs Staff.
[FR Doc. 90-20809 Filed 9-4-90; 8:45 am]
BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Endangered and Threatened Wildlife and Plants: Draft Recovery Plans for Loggerhead and Green Sea Turtles

AGENCY: National Marine Fisheries Service, NOAA, Commerce U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of availability and request for comments.

SUMMARY: Draft Recovery Plans for the loggerhead (*Caretta caretta*) and green sea turtle (*Chelonia mydas*) are now available for review and comments by interested parties prior to final approval and adoption by the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS). The plan was developed by the Loggerhead/Green Turtle Recovery Team which was appointed in 1989 by NMFS and USFWS. The recovery team is jointly supported by the USFWS and NMFS. These agencies share the responsibility for sea turtle recovery under the authority of the Endangered Species Act of 1973. Recovery team membership includes biologists and resource managers from the University of Central Florida, the Archie Carr Center for Sea Turtle Research, South Carolina Wildlife and Marine Resources Department,

University of Florida, Florida
Department of Natural Resources,
NMFS, and USFWS.

DATES: Comments on the draft recovery plans must be received on or before October 20, 1990.

ADDRESSES: Comments should be addressed to Director, Office of Protected Resources, National Marine Fisheries Service, 1335 East West Highway, Silver Spring, MD 20910. Copies of the Draft Loggerhead and Green recovery plans are available upon request from Charles Oravetz, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702, or Charles Karnella, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, room 8256, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Charles Oravetz at NMFS, 813/893-3366, or Earl Possart at USFWS, 904/791-2580.

SUPPLEMENTARY INFORMATION: The Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*) requires that the agencies responsible for listed species develop and implement recovery plans for the conservation and survival of threatened and endangered species, unless it is determined that such plans will not promote the conservation of the species. Accordingly, NMFS and USFWS appointed a Loggerhead/Green Turtle Recovery Team to assist in the development of Draft Loggerhead and Green Sea Turtle Recovery Plans. The Recovery Plans discuss the natural history, current status of the populations, and the known and potential human impacts on the species. Actions that would promote the recovery of the loggerhead and green sea turtles are identified and discussed in the draft plans. The Recovery Plans will be used to direct U.S. activities to promote the recovery of these endangered and threatened sea turtles.

Dated: August 22, 1990.

Nancy Foster,

Director, Office of Protected Resources,

[FR Doc. 90-20754 Filed 9-4-90; 8:45 am]

BILLING CODE 3510-22-M

[Docket No. 900826-0226]

Groundfish and Crab Fisheries of the Bering Sea and Aleutian Islands Area, Groundfish Fisheries of the Gulf of Alaska, and Pacific Halibut Fisheries off the State of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of intent to develop measures to limit access to the

groundfish, crab, and halibut fisheries off Alaska, and notice of control date for entry into the fisheries.

SUMMARY: The North Pacific Fishery Management Council (Council) intends to develop for recommendation to the Secretary of Commerce (Secretary) a management regime for the groundfish, crab, and halibut fisheries currently under the Council's authority that limits the number of vessels participating in those fisheries. This notice announces that any fishing vessel entering these fisheries after September 17, 1990, will not be assured of future access to those fisheries if a moratorium on new entry into those fisheries is developed and implemented.

Due consideration, however, will be given to those vessels under construction, reconstruction, or under contract for construction, reconstruction or purchase as of September 17, 1990, for the purpose of participating in the identified fisheries, provided that those vessels have harvested or processed fish in the identified fisheries by January 15, 1992. Due consideration also will be given to those vessels that were under written option or contract for purchase, or written contract for construction or reconstruction, prior to September 17, 1990, that was cancelled due to the previously proposed January 19, 1990 control date, provided that those vessels are under written contract for construction, reconstruction or purchase as of January 1, 1991, for the purpose of participating in the identified fisheries, and provided those vessels have harvested or processed fish in the identified fisheries by January 15, 1992.

This action is necessary to alert the public of the Council's fishery management intentions and possible constraints on future access to public fishery resources. The intended effect of this announcement is to discourage new entry into the identified fisheries while the Council continues discussions on whether and how access to these fisheries should be controlled.

FOR FURTHER INFORMATION CONTACT: Steven K. Davis, Deputy Director, North Pacific Fishery Management Council, telephone: 907-271-2808, or Jay J. C. Ginter, Fishery Management Biologist, Alaska Region, NMFS, telephone: 907-586-7229.

SUPPLEMENTARY INFORMATION: The commercial harvest of groundfish in the U.S. exclusive economic zone of the Gulf of Alaska and the Bering Sea and Aleutian Islands area is governed by Federal regulations at 50 CFR 611-92 and 611.93, and 50 CFR parts 672 and 675, which implement the Fishery

Management Plan (FMP) for the Gulf of Alaska Groundfish Fishery and the FMP for the Bering Sea/Aleutian Islands Groundfish, respectively. The commercial harvest of King and Tanner crabs in the Bering Sea and Aleutian Islands area is governed by State of Alaska regulations at title 16, chapters 34 and 35, and the FMP for the Commercial King and Tanner Crab Fisheries in the Bering Sea/Aleutian Islands. The harvest of Pacific halibut in all waters off Alaska by U.S. fishermen is governed by Federal regulations at 50 CFR part 301, which implement rules developed by the International Pacific Halibut Commission (IPHC) and the Council.

The groundfish and crab FMPs and their accompanying environmental impact statements (EISs) were prepared by the Council and approved by the Secretary under authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The Council also has authority under the Northern Pacific Halibut Act of 1982 to develop regulations, governing the catch of Pacific halibut in U.S. waters, which are in addition to, but not in conflict with, regulations developed by the IPHC. This includes authority to allocate halibut fishing opportunities among U.S. fishermen should such allocation be necessary.

The Problem

Domestic harvesting and processing capacity in the groundfish, crab, and halibut fisheries off Alaska currently exceeds the amount necessary to harvest the annual total allowable catch of most species of groundfish, halibut, and crabs under Council authority. Further, the Council has determined that the continued entry of fishing effort into these fisheries will only add to harvesting and processing capacity, and that continued entry exacerbates current fishery management difficulties or causes new problems.

Fishery managers have found that excess capacity may lead to allocation conflicts, gear conflicts, excessive by-catch of non-target species, high grading or discard of lower valued but potentially useful fish products, poor handling of catch, insufficient attention to safety, and economic instability from boom-and-bust harvest cycles. In recent years, the Council has noted some or all of these problems in every fishery under its authority.

Although the Council continues to develop open access regulations in an attempt to address these problems, the Council also is considering a change in the open-access nature of fisheries as a

more comprehensive solution. At this time, the Council has not determined the best way to control or restrict access to commercial fishery resources in the long term. However, the Council has tentatively determined that a moratorium on new entry into the fisheries may be necessary for an interim period to curtail the increase in fishing capacity and permit the Council time to develop and assess the potential effects of alternative long-term solutions to the identified management problems. The Council is aware that such a moratorium will not resolve the fundamental problem of excess capacity in the fisheries. Instead, the purpose of the moratorium, if approved, would be to prevent continued growth in fishing capacity, while the Council assesses alternative management measures including, but not limited to, limited- and open-access measures to address the overcapacity problem and to achieve the optimum yield from the fisheries. As currently contemplated by the Council, this moratorium would apply for a period of 4 years from its effective date, or less, if rescinded. Nothing in this notice or any potential moratorium on entry would prevent the development, approval, and implementation of limited access measures for sablefish, halibut, or other fisheries under the Council's authority.

The Council intends, in making this announcement, to discourage speculative entry into the groundfish, crab, and halibut fisheries off Alaska while potential access-control management regimes are discussed by the Council, analyzed, and developed. As the Council discusses a moratorium on entry or other access control management regime, some fishermen who do not currently fish in these fisheries, and never have done so, may decide to enter the fishery for the sole purpose of establishing a record of making commercial landings from these fisheries. Such a record generally is considered indicative of economic dependency on the fishery. On this basis the fishermen may claim access to a fishery that otherwise would be limited to traditional participants. New entrants may have to buy fishing rights from an existing participant. Such future entry costs may inspire speculative entry, which could cause a rapid increase in fishing effort in fisheries already fully or overdeveloped with harvesting capacity when controlled-access management begins to be considered. The original problems prompting consideration of limited access then become exacerbated.

To help distinguish *bona fide*, established fishermen from the speculative entrants to a fishery, a management authority may set a control date before discussion and planning of controlled-access management begin. Fishermen are notified that entering the fishery after that date will not necessarily assure them of future access to the fishery on grounds of previous participation. Other qualifying criteria may also be required for future access.

This notice announces that any fishing vessel entering the groundfish, crab, or halibut fisheries off Alaska that currently are under the authority of the Council after September 17, 1990, will not be assured of future access to those fisheries if a moratorium in those fisheries is developed and implemented.

Due consideration, however, will be given to those vessels under construction, reconstruction, or under contract for construction, reconstruction or purchase as of September 17, 1990, for the purpose of participating in the subject fisheries, provided that those vessels have harvested or processed fish in the identified fisheries by January 15, 1992. Due consideration also will be given to those vessels that were under written option or contract for purchase, or written contract for construction or reconstruction, prior to September 17, 1990, that was cancelled due to the previously proposed January 19, 1990 control date, provided that those vessels are under written contract for construction, reconstruction or purchase as of January 1, 1991, for the purpose of participating in the identified fisheries, and provided those vessels have harvested or processed fish in the identified fisheries by January 15, 1992.

This action is not intended to supersede any action that the Council may take to limit access to the sablefish and halibut fisheries off Alaska prior to the development of a moratorium. This action does not commit the council or NMFS to develop any particular management regime or any specific criteria for determining future access to these fisheries. If a limited-access system is implemented, fishermen are not guaranteed future participation in these fisheries regardless of their date of entry or their intensity of participation before or after the control date. The Council may choose a different control date or it may choose a limited-access regime that does not make use of such a date. The Council may choose to give variably weighted consideration to fishermen in the fishery before and after the control date. The Council may choose also to take no further action to control access to the fishery. However,

any action taken by the Council to control access to these fishery resources will be taken pursuant to the requirements for fishery management plan development established under the Magnuson Act and other applicable law.

Dated: August 30, 1990.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries,
National Marine Fisheries Service.

[FR Doc. 90-20850 Filed 9-4-90; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Permit modifications: Theater of the Sea, Permit Nos. 69 and 326 Dolphin Research Center, Permit No. 514 Dolphins Plus, Inc., Permit Nos. 292 and 577 Hyatt Regency Waikoloa Resort, Permit No. 625.

Notice is hereby given that pursuant to the provisions of §§ 216.33 (d) and (e) of the Regulations governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Special Conditions on Swim-with-the-Dolphin (SWTD) Programs that apply to public display Permits Nos. 69 and 326 issued to Theater of the Sea (P92 and P92B), Islamorada, Florida; Permit No. 514 issued to Dolphin Research Center (P53B), Marathon, Florida; Permit Nos. 292 and 577 issued to Dolphins Plus, Inc. (P234 and P234A), Key Largo, Florida; and Permit No. 625 issued to the Hyatt Regency Waikoloa Resort (P407), Waikoloa, Hawaii, are modified by deleting Special Condition D.6(e) and substituting the following:

D.6. Program Requirements

(e) Supervision of Swim Sessions: All SWTD activities in which a member of the public participates in an in-water encounter with dolphins must be directly supervised by at least two (2) members of the Permit Holder's training staff. At least one member of the Permit Holder's staff must monitor the activities from poolside out of the water during each swim session. The other staff member shall monitor the activities during each swim session from in the water or from poolside.

Documents concerning the above modifications and permits, and other information regarding swim-with-the-dolphin programs, are available for inspection by appointment in the Office of Protected Resources, National Marine Fisheries Service, Room 7324, 1335 East West Highway, Silver Spring, Maryland 20910 (301/427-2289).

This modification is effective on September 1, 1990.

Dated: August 28, 1990.

Nancy Foster,

Director, Office of Protected Resources,
National Marine Fisheries Service.

[FR Doc. 90-20766 Filed 9-4-90; 8:45 am]

BILLING CODE 3510-22-M

Technology Administration

Office of the Assistant Secretary for Technology Policy

Announcement of Public Workshop to Discuss the Feasibility of an International Research and Development Program on Intelligent Manufacturing Systems

AGENCY: Office of the Assistant Secretary for Technology Policy, Commerce.

ACTION: Notice of meeting.

SUMMARY: The Office of the Assistant Secretary for Technology Policy invites interested members of the public to attend and participate in a workshop to discuss the feasibility and merits of an international research and development program for so-called Intelligent Manufacturing Systems (IMS). IMS would integrate computers with machinery and humans throughout the research and development, design, production and distribution phases of manufacturing in order to maximize efficiency and gain flexibility to make rapid changes. This process would have applications throughout industry. The workshop will be held on September 26, 1990 in the Herbert Hoover Building in Washington, DC. Seating is limited to 30 participants per session and there will be two sessions that will each cover the same subject matter. If public interest warrants, additional sessions will be scheduled. Because of space limitations, reservations will be required to attend the workshop.

DATE TO MAKE RESERVATIONS:

Reservations to attend one of the sessions will be required by no later than September 17, 1990, in order to permit preparation, duplication, and advance distribution of workshop materials and the agenda. Reservations may be made by calling the Office of the Assistant Secretary for Technology Policy at the number shown below.

DATE OF MEETING: The first session of the meeting will convene on September 26, 1990 at 8:30 a.m. and will continue until noon. The second session will begin on the same day at 1 p.m. and will continue until 4:30 p.m.

ADDRESSES: The meeting will be held in the Herbert Hoover Building, at 14th Street and Constitution Avenue, Washington, DC. The room number for the meeting, when it becomes known, will be available by calling the telephone number below.

FOR FURTHER INFORMATION CONTACT: For further information or to reserve a place for either session, please contact Mr. Ted Lettes, (202) 377-8111 or Dr. Phyllis Genter, (202) 377-1287.

SUPPLEMENTARY INFORMATION: Pursuant to the U.S.-Japan Science and Technology Agreement, and at the request of the Office of Science and Technology Policy, the Department of Commerce is holding a public workshop to discuss the feasibility and merits of an international research and development program for so-called Intelligent Manufacturing Systems (IMS).

The possibility of an international research and development program has arisen as a result of a proposal to fund a \$1 billion effort over ten years by Japan's Ministry of International Trade and Development (MITI). MITI's proposal was made to a number of organizations, including U.S. industry and research groups. In early May, the U.S. and Japanese Governments agreed to address the MITI proposal under the auspices of the Head of State. U.S.-Japan Science and Technology Agreement of 1988 which calls for enhanced collaboration in manufacturing. Later that month, the U.S., Japan and the European Community (EC) agreed that any collaborative research and development effort must be jointly prepared, and that the U.S. and the EC would present their own proposals at discussions scheduled for Tokyo in the fall.

For the U.S. to take part in an advanced manufacturing initiative, agreement must be reached between the interested governments on the methods of cooperation, intellectual property rights, funding and technical project areas.

In preparation for the fall meeting, the Department welcomes participation in the workshop by interested members of the public who may wish to address any issue concerning this proposed international cooperation in advanced manufacturing. In particular, the Office of the Assistant Secretary would welcome comments or statements on the following topics:

- Where does U.S. industry want to be in manufacturing technology and its commercial application by the year 2010?

- Should the United States participate in a cooperative international manufacturing effort?

- Can an international collaborative project be structured so that U.S. researchers' specific companies and the overall U.S. industrial base will benefit?

- What form should participation by U.S. industry and universities take if there is to be an international program?

Dated: August 29, 1990.

Deborah Wince-Smith,

Assistant Secretary for Technology Policy.

[FR Doc. 90-20756 Filed 9-4-90; 8:45 am]

BILLING CODE 3510-BP-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Wage Committee, Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92-463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, October 2, 1990; Tuesday, October 9, 1990; Tuesday, October 16, 1990; Tuesday, October 23, 1990; and Tuesday, October 30, 1990 at 10 a.m. in room 1E801, The Pentagon, Washington, DC.

The Committee's primary responsibility is to consider and submit recommendations to the assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Public Law 92-392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Public Law 92-463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b.(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b.(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of

Defense (5 U.S.C. 552b(c)(2)), and the detailed wage data considered from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, room 3D264, The Pentagon, Washington, DC 20301.

Dated: August 30, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90-20826 Filed 9-4-90; 8:45 am]

BILLING CODE 3810-01-M

Meeting: DIA Advisory Board

AGENCY: Defense Intelligence Agency Advisory Board, Defense.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Public Law 92-463, as amended by section 5 of Public Law 94-409, notice is hereby given that a closed meeting of a panel of the DIA Advisory Board has been scheduled as follows:

DATES: Wednesday, September 11, 1990 (8:30 a.m. to 5 p.m.)

ADDRESSES: The DIAC, Bolling AFB, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel John G. Sutay, USAF, Chief, DIA Advisory Board, Washington, DC 20340-1328 (202/373-4930).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(1), title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on Counternarcotics.

Dated: August 30, 1990.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90-20827 Filed 9-4-90; 8:45 am]

BILLING CODE 3810-01-M

Corps of Engineers; Department of the Army

To Prepare Draft Environmental Impact Statement; Missouri River

AGENCY: U.S. Army Corps of Engineers, Army, DOD.

ACTION: Notice of Intent to prepare a draft environmental impact statement (DEIS).

Proposed Action

SUMMARY: The Missouri River Master Water Control Manual provides guidelines for operation of the Missouri River main stem system from Ft. Peck Lake in eastern Montana to Gavins Point Dam in southeastern South Dakota. At present, the system is operated for multiple purposes that include flood control, hydropower, navigation, municipal and industrial water supply, water quality, fish and wildlife, and recreation. The manual is being updated for the first time since 1979. The Corps will be preparing an EIS to discuss impacts resulting from significant changes to current guidelines.

Alternatives

The alternatives being considered, which are tentative at this time, are based on various minimum operating pool levels and minimum stream flows through a sustained drought.

Scoping Process

A public involvement program is already underway, having begun with the publication of a Phase I report earlier this year. In addition to involving Federal, State and local agencies, a Governor's Oversight Committee has been formed consisting of the governors of the 10 Missouri River basin states. Affected Federal, State, and local agencies, affected Indian tribes, and other interested organizations and parties, as well as the general public, are invited to participate in the EIS scoping process.

Significant issues identified to date, which will be analyzed in the EIS, include possible impacts to recreation, fish and wildlife resources, navigation, water supply, water quality, economics, and threatened and endangered species.

Consideration is being given to requesting that the Western Area Power Administration, the Bureau of Reclamation, and the U.S. Fish and Wildlife Service be cooperating agencies in the preparation of the EIS. The Corps of Engineers will be the lead agency.

Formal consultation with the U.S. Fish and Wildlife Service, under section 7 of the Endangered Species Act, has been

ongoing since 1987, and is likely to continue.

The scoping process will continue with public meetings scheduled for the October 1-12, 1990, period. Scoping meetings, each beginning at 7 p.m. will be held on October 1 at the Colonial Inn, 2301 Colonial Drive, Helena, MT; October 2 at the Cottonwood Inn, Hwy 3 East, Glasgow, MT; October 3 at the Ramkota Inn, 920 W. Sioux, Pierre, SD; October 4 at the Raddison Inn, 800 S. Third Street, Bismarck, ND; October 9 at the Hilton Hotel, 2240 Democrat Rd., Memphis, TN; October 10 at the Hyatt Regency, One St. Louis Union Station, St. Louis, MO; October 11 at the Ramada Inn North, 1211 Armour Rd, North Kansas City, MO; and October 12 at the Holiday Inn, 232 Avenue N, Council Bluffs, IA.

It is estimated that the DEIS will be available for public and agency review by early January 1992.

ADDRESSES: Questions about the proposed action and DEIS can be answered by: Gerard E. Mick, U.S. Army Corps of Engineers, ATTN: CEMRO-PD-M, 215 N. 17th Street, Omaha, NE 68102, (402) 221-4604.

Dated: August 28, 1990.

Kenneth S. Cooper,

Chief, Planning Division, Omaha District.

[FR Doc. 90-20849 Filed 9-4-90; 8:45 am]

BILLING CODE 3710-52-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before October 5, 1990.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 320B, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to James O'Donnell, Department of Education, 400 Maryland

Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: James O'Donnell, (202) 708-5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from James O'Donnell at the address specified above.

Dated: August 29, 1990.

James O'Donnell,

Acting Director, for Office of Information Resources Management.

Office of Educational Research and Improvement

Type of Review: Revision.

Title: Final Performance Report for the College Library Technology and Cooperation Grants Program, HEA Title II-D.

Frequency: Annually.

Affected Public: Non-profit institutions.

Reporting Burden

Responses: 46.

Burden Hours: 386.

Recordkeeping Burden

Recordkeepers: 1.

Burden Hours: 12.

Abstract: This form is needed for institutions of higher education and non-profit organization grantees to submit their final performance reports to the Department to provide data and

information on their projects and to enable the Department to close-out the grant awards.

[FR Doc. 90-20772 Filed 9-4-90; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Southeastern Power Administration, Order Confirming and Approving Power Rates on an Interim Basis

AGENCY: Department of Energy, Southeastern Power Administration (Southeastern).

ACTION: Notice of approval on an interim basis of the Georgia-Alabama Projects' rates.

SUMMARY: On August 27, 1990, the Deputy Secretary Confirmed and approved, on an interim basis, sixteen replacement Rate Schedules, GA-1-C, GA-2-C, GA-3-B, GU-1-C, ALA-1-G, ALA-3-C, MISS-1-G, MISS-2-C, SC-3-B, SC-4-A, SC-5-A, CAR-3-B, CAR-4-A, SCE-2-B, SCE-4-A, and GAMF-2-F for Georgia-Alabama Projects' power. The rates were approved on an interim basis through September 30, 1993, and are subject to confirmation and approval by the Federal Energy Regulatory Commission on a final basis.

DATES: Approval of rates on an interim basis is effective on October 1, 1990.

FOR FURTHER INFORMATION CONTACT:

Leon Jourolmon, Jr., Director, Power Marketing, Southeastern Power Administration, Department of Energy, Samuel Elbert Building, Elberton, Georgia 30635.

Rodney L. Adelman, WDC, Director, Washington Liaison Office, Forrestal Building, 1000 Independence Ave., SW., Washington, DC 20585.

SUPPLEMENTARY INFORMATION: The Federal Energy Regulatory Commission by Order issued November 1, 1989, in Docket No. EF89-3011-000 confirmed and approved Wholesale Power Rate Schedules GA-1-B, GA-2-B, GA-3-A, GU-1-B, ALA-1-F, ALA-3-B, MISS-1-F, MISS-2-B, SC-3-A, SC-1-E, SC-2-E, CAR-3-A, CAR-2-F, SCE-2-A, SCE-1-A, and GAMF-2-E through September 30, 1990. Rate Schedules GA-1-C, GA-2-C, GA-3-B, GU-1-C, ALA-1-G, ALA-3-C, MISS-1-G, MISS-2-C, SC-3-B, SC-4-A, SC-5-A, CAR-3-B, CAR-4-A, SCE-2-B, SCE-4-A, and GAMF-2-F replace Rate Schedules GA-1-B, GA-2-B, GA-3-A, GU-1-B, ALA-1-F, ALA-3-B, MISS-1-F, MISS-2-B, SC-3-A, SC-1-E, SC-2-E, CAR-3-A, CAR-2-F, SCE-2-A, SCE-1-A, and GAMF-2-E, respectively.

Issued in Washington, DC, August 27, 1990.

W. Henson Moore,

Deputy Secretary.

[Rate Order No. SEPA-27]

In the Matter of Southeastern Power Administration—Georgia-Alabama Projects' Power Rates pursuant to section 302(a) and 301(b) of the Department of Energy Organization Act, Public Law 95-91, the functions of the Secretary of the Interior and the Federal Power Commission under section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, relating to the Southeastern Power Administration (Southeastern) were transferred to and vested in the Secretary of Energy, By Delegation Order No. 0204-108, effective May 30, 1986, 51 FR 19744 (May 30, 1986), the Secretary of Energy delegated to the Administrator the authority to develop power and transmission rates, and delegated to the Under Secretary the authority to confirm, approve, and place in effect such rates on an interim basis and delegated to the Federal Regulatory Commission (FERC) the authority to confirm and approve on a final basis or to disapprove rates developed by the Administrator under the delegation. On August 3, 1990, the Secretary of Energy issued Notice SEN-10D-90, attached hereto, granting the Deputy Secretary sign off authority respecting matters for which the Assistant Secretary, Conservation and Renewable Energy, is responsible. The Southeastern, Southwestern and Alaska Power Administrations organizationally report to the Assistant Secretary, Conservation and Renewable Energy. This rate order is to be issued by the Deputy Secretary pursuant to said notice.

Background

Power from the Georgia-Alabama System of Projects is presently sold under Wholesale Power Schedules GA-1-B, GA-2-B, GA-3-A, GU-1-B, ALA-1-F, ALA-3-B, MISS-1-F, MISS-2-B, SC-3-A, SC-1-E, SC-2-E, CAR-3-A, CAR-1-F, SCE-2-A, SCE-1-A, and GAMF-2-E. All of these rate schedules were approved by the FERC on November 1, 1989, for a period ending September 30, 1990.

Public Notice and Comment

Opportunities for public review and comment on the Rate Schedules proposed for use during the period October 1, 1990, through September 30, 1993, were announced by Notice published in the *Federal Register* on March 9, 1990, and all customers were notified by mail. Public Information and Comment Forums were held in Atlanta, Georgia, on April 12, 1990, and in Columbia, South Carolina on April 19, 1990, and written comments were invited by the Notice through June 9, 1990. Oral comments were presented at the forum and written comments were received prior to June 9, 1990. There were 10 substantive comments received.

All comments were evaluated by Southeastern. A Summary of the 10 substantive comments evaluated follows:

Comment 1. There is not sufficient detail to determine the appropriateness of the Operation and Maintenance Expense of the Corps of Engineers.

Response. Almost all commenters are concerned with the increases in O&M expenses at the Corps of Engineers. Southeastern agrees with the statement and is developing a procedure with the Corps of Engineers to more closely scrutinize and control the O&M expenses. The Corps and Southeastern will estimate O&M costs annually and will justify deviations from the estimated costs.

Comment 2. Southeastern should continue to work toward better justification of the O&M costs.

Response. Southeastern agrees with the Preference Customers and is a member of a committee with representatives of the preference customers. The committee is receiving more detailed O&M data from the Corps and is analyzing that data to see if it is appropriate. Southeastern is committed to determining the reasonableness of all costs included in the rates.

Comment 3. The energy surcharge for those customers who did not accept the June 1, 1989, rate increase is equitable.

Response. Southeastern agrees with the comment. Many customers expressed support for the energy surcharge. Southeastern proposed, and continues to propose an energy surcharge for those customers who did not accept the rate increase effective June 1, 1989. The rate is designed to recover the increased amount that the preference customers would have paid over the 16-month period from June 1, 1989, through September 30, 1990. The rate is designed to recover the underpayment plus interest over the 36 months of this rate approval period. Some customers, in their comments regarding the 1989 rate filing, stated that Southeastern should charge the customers who did not accept the rate increase for the costs they did not pay in future rate filing. Also at the time of the 1989 rate filing, Southeastern expressed the intention of charging an additional catch-up amount to the customers who did not accept the rate adjustment in the 1990 rate filing.

Comment 4. The energy surcharge for those customers who did not accept the June 1, 1989, rate increase is inequitable.

Response. Southeastern disagrees, see Response to Comment 3. Some of the customers stated that they objected to the energy surcharge.

Comment 5. The energy surcharge amounts to retroactive ratemaking.

Response. Some of the customers who did not accept the earlier rate increase contend that the energy surcharge is retroactive ratemaking. Southeastern believes that a major responsibility of the administration is to charge all customers for their appropriate share of the costs. They in effect argue that by declining to participate in the earlier rate increase, they should not have to pay their portion of these costs which would otherwise have been included in this rate. If Southeastern did not include a surcharge, then the customers who did accept the earlier rate adjustments would subsidize the non-paying customers, and in effect relieve them of paying their share of the costs which Southeastern is obliged to collect in this rate. Southeastern expressed its intent to recoup these costs in this rate at the time of the June 1, 1989, rate adjustment.

These South Carolina customers, who did not accept the 1989 rate increase contend that this recoupment must be reviewed under the just and reasonable rate standard of The Federal Power Act, and specifically, whether it might constitute retroactive ratemaking.¹ However, formulation, review, and approval of the Federal power marketing agencies' and Southeastern's rates are subject only to the Flood Control Act of 1944 which requires:

Rate schedules shall be drawn having regard to the recovery [upon the basis of the application of such rate schedules to the capacity of the electric facilities of the projects] of the cost of producing and transmitting such electric energy including the amortization of the capital investment allocated to power over a reasonable period of years * * *

See *United States v. City of Fulton*, 475 U.S. 657 (1986); and *United States v. TEX-LA Electric Coop., Inc.*, 693 F. 2d 392 (5th Cir. 1982). The Flood Control Act does not impose a just and reasonable standard or the more narrow prohibition against retroactive rates and the recoupment of these costs are not barred by that act.

Comment 6. The energy surcharge is not in accordance with sound business principles.

¹ The doctrine against retroactive ratemaking refers to a line of "cases under both the Federal Power Act * * * and Natural Gas Act (which) establish(ed) the principle that only prospective ratemaking is allowed." A rate designed to recoup past losses under the Federal Power Act is retroactive and illegal. *Public Service Company of New Hampshire v. FERC*, 600 F. 2d 944, 958 (DC Cir. 1979), cert.den. 444 U.S. 990 (1979); *Columbia Gas Transmission Corp.*, Docket No. CP88-249-001, 44 FERC 61,385, at page 62,217 (1988).

Response. Some customers believe that the surcharge violates the meaning of the contract. Southeastern believes that a sound business principle is to charge an equitable rate to each of its customers and to allow subsidies only in exceptional and well-justified instances. Southeastern cannot see any reason to allow the preference customers who came to the aid of Southeastern during a financial crisis of repeated droughts to subsidize the customers who did not accept the earlier rate increase and in effect relieve these non-paying customers of their portion of these costs. Southeastern believes that it is in accordance with sound business principles to be equitable to all of our customers and see that all pay their fair share of the costs.

Comment 7. The method of classification of customer categories is not rational and is discriminatory against those customers who did not accept the June 1, 1989, rate increase.

Response. The method of classification was made in order to segment those customers who did not pay the increased rates from June 1, 1989, through September 30, 1990, and charge them a catch-up rate plus interest for the amount not paid.

Comment 8. Purchase power and wheeling costs should be included in future years as an average year amount.

Response. Southeastern agrees. Southeastern has prepared a study which shows that in a 50-year period droughts will occur where \$50,000,000 of power must be purchased. Therefore, we included \$1,000,000 per year in the repayment study.

Comment 9. We oppose the 5-year cost evaluation methodology which includes Richard B. Russell costs.

Response. Subsequent to that comment, all customers have agreed to sign supplemental contracts which allows rate adjustments on October 1, of any future year. Therefore, Southeastern is proposing a 3-year cost evaluation period for all customers.

Comment 10. Please consider offering a rate based on a 5-year cost evaluation period which would increase in the event that Richard B. Russell pump units become available during the 5 years.

Response. Southeastern is proposing a 3-year cost evaluation period which does not include the cost of Richard B. Russell pump units for all customers.

Discussion

System Repayment

An examination of Southeastern's system power repayment study, prepared in February 1990, for the

Georgia-Alabama System of Projects, reveals that over the 3-year rate review period with an annual revenue increase of \$17,977,000 over the current revenues shown in a February 1990 Southeastern repayment study, all system power costs are paid within their repayment life. The Administrator of Southeastern has certified that the rates are consistent with applicable law and that they are the lowest possible rates to customers consistent with sound business principles.

Environmental Impact

Southeastern has reviewed the possible environmental impacts of the rate adjustment under consideration and has concluded with Departmental concurrence that, because the increased rates would not significantly affect the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, the proposed action is not a major Federal action for which preparation of an Environmental Impact Statement is required.

Availability of Information

Information regarding these rates, including studies, and other supporting materials is available for public review in the offices of Southeastern Power Administration, Samuel Elbert Building, Elberton, Georgia 30635, and in the Washington Liaison Office, James Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

Submission to the Federal Energy Regulatory Commission

The rates hereinafter confirmed and approved on an interim basis, together with supporting documents, will be submitted promptly to the Federal Energy Regulatory Commission for confirmation and approval on a final basis for a period beginning October 1, 1990, and ending no later than September 30, 1993.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm and approve on an interim basis, effective October 1, 1990, attached Wholesale Power Rate Schedules GA-1-C, GA-2-C, GA-3-B, GU-1-C, ALA-1-G, ALA-3-C, MISS-1-G, MISS-2-C, SC-3-B, SC-4-A, SC-5-A, CAR-3-B, CAR-4-A, SCE-2-B, SCE-4-A, and GAMF-2-F. The rate schedules shall remain in effect on an interim basis through September 30, 1993, unless such period is extended or until the FERC confirms and approves them or

substitute rate schedules on a final basis.

Issued in Washington, DC, this 27th day of August 1990.

W. Henson Moore,

Deputy Secretary.

[FR Doc. 90-20862 Filed 9-4-90; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

Stratospheric Ozone Advisory Committee

ACTION: Announcement of advisory committee meeting.

SUMMARY: The next meeting of the U.S. Environmental Protection Agency (EPA) Federal Advisory Council on Stratospheric Ozone Protection (STOPAC) will be held on Wednesday, October 3, 1990. The meeting will take place from 9 a.m. to 1 p.m., at the Holiday Inn Capital, 550 C Street SW., Washington, DC. The public is invited to attend the meeting. Seating will be on a first come, first serve basis.

The purpose of the meeting will be to review the highlights of the London meeting of the Parties to the Montreal Protocol, held in June 1990, and provide an overview of the Clean Air Act Conference Agreement on title VII, Protection of Stratospheric Ozone. The Advanced Notice of Proposed Rule Making (ANPRM) on chlorofluorocarbon (CFC) recycling, published in the *Federal Register* on May 1, 1990, will also be discussed.

FOR FURTHER INFORMATION CONTACT: Karla Perri, at (202) 475-7496 or write to the Division of Global Change, Office of Air and Radiation, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Dated: August 29, 1990.

Robert Axelrad,

Acting Director, Office of Atmospheric and Indoor Air Programs.

[FR Doc. 90-20844 Filed 9-4-90; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3827-5]

Revocation of Sulfide Waivers Granted on November 2, 1984, to Eight Milwaukee Tanneries Subject to Pretreatment Standards

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Milwaukee Metropolitan Sewerage District (MMSD) operates

publicly owned treatment works (POTW's) which accept wastewater from leather tanning and finishing facilities which are subject to pretreatment standards at 40 CFR part 425. Pursuant to 40 CFR 425.04(c) the MMSD certified to the U.S. Environmental Protection Agency (U.S. EPA) on March 26, 1984, that discharges of sulfide from eight tanneries would not interfere with the operation of the POTW's. On November 2, 1984, U.S. EPA placed a notice at 49 FR 44143-44145 stating that, pursuant to 40 CFR part 425, the following eight tanneries would not be subject to the categorical sulfide pretreatment standard:

1. Cudahy Tanning Company, 5043 S. Packard, Milwaukee, Wisconsin.
2. Flagg Tanning Corporation, 624 W. Oregon St., Milwaukee, Wisconsin.
3. A.F. Gallun and Sons Corporation, 1818 N. Water St., Milwaukee, Wisconsin.
4. Gebhardt-Vogel Tanning Corporation, 2615 W. Greves St., Milwaukee, Wisconsin.
5. Pfister and Vogel Tanning Company, 1531 N. Water St., Milwaukee, Wisconsin.
6. Seidel Tanning Corporation, 602 W. Oregon St., Milwaukee, Wisconsin.
7. Thiele Tanning Corporation, 123 N. 27th St., Milwaukee, Wisconsin.
8. Zeigler Tanning Corporation, 606 W. Oregon St., Milwaukee, Wisconsin.

On May 11, 1990 MMSD notified U.S. EPA that MMSD had made a determination to revoke the certification of no interference to the POTW's due to tannery sulfide discharges. The affected tanneries were informed of MMSD's intention to revoke the sulfide waivers and were provided a public hearing date. MMSD's notice was not disputed at the public hearing or in written comments.

Pursuant to 40 CFR 425.04(d) and in consideration of the representations and information provided by MMSD, I hereby revoke the November 2, 1984, waiver of the sulfide requirements set forth in the Leather Tanning and Finishing Pretreatment Standards for the enumerated tanneries in Milwaukee, Wisconsin. As provided in 40 CFR 425.04(d)(2), the affected tanneries must comply with the categorical sulfide standards no later than 18 months following publication of this notice or at an earlier date established by MMSD.

DATES: This action is effective as of September 5, 1990.

FOR FURTHER INFORMATION CONTACT: Catherine Allen, Permits Section, Water

Quality Branch, U.S. EPA—Region 5, at (312) 886-0136.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 90-20843 Filed 9-4-90; 8:45 am]

BILLING CODE 6560-50-M

Decision on Lists of Waters, Point Sources and Pollutants and the Individual Control Strategies for Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin

[FRL-3826-9]

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: This action provides the U.S. Environmental Protection Agency's (EPA Region V) determinations in response to public comments regarding EPA Region V's proposed approvals and disapprovals of the lists of waters, point sources and pollutants and the individual control strategies (ICSs) submitted by the States of Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin (EPA Region V States) pursuant to section 304(l) of the Clean Water Act (CWA). The public comments were received in response to EPA Region V's notice in the *Federal Register* on June 5, 1989, (54 FR 24030), which identified a proposed list of waters which have uses impaired by the presence of toxic pollutants and tentative determinations on the acceptability of individual control strategies for point sources impacting certain of these waters.

ADDRESSES: Copies of the June 5, 1989, proposal and supporting information, public comments, EPA Region V's response to these comments, and other information supporting these determinations are available for public inspection and copying upon request. Complete Records may be viewed at: U.S. Environmental Protection Agency, Region V, Library (16th Floor), 230 South Dearborn Street, Chicago, IL 60604.

State specific records may be viewed at:

Illinois

Lincoln Library, Lincoln Library
Reference Department, 326 South 7th
Street, Springfield, IL 62701.

Indiana

Department of Environmental
Management, Office of Water
Management, 105 South Meridian
Street, Indianapolis, IN 46206.

Michigan

Library of Michigan, Government
Documents Service, 717 West Allegan,
Lansing, MI 48909.

Detroit Public Library, Government
Documents Service, Sociology/
Economics Department, 5201
Woodward Street, Detroit, MI 48202.

Minnesota

Minnesota Pollution Control Agency,
Division of Water Quality, 520
LaFayette Road, St. Paul, MN 55155.

Ohio

Ohio EPA Library—Central District
Office, 1800 Watermark Drive,
Columbus, OH 43215.

U.S. EPA Eastern District Office, 25089
Central Ridge Road, Westlake, OH
44145.

Wisconsin

Water Resources Center, University of
Wisconsin—Madison, 1975 Willow
Drive, Madison, WI 53706.

FOR FURTHER INFORMATION CONTACT:

Ms. Anita Chico, Permits Section, Water
Quality Branch, U.S. EPA Region V,
5WQP, 230 South Dearborn Street,
Chicago, IL 60604; telephone (312) 353-
2105.

SUPPLEMENTARY INFORMATION: On June 5, 1989, the U.S. Environmental Protection Agency announced its proposed approval and disapprovals of determinations made by the six States in EPA Region V pursuant to the requirements of section 304(l), and invited comments on those proposals for 120 days thereafter. This public comment period closed on October 4, 1989. In addition to the *Federal Register* notice, EPA Region V summarized its actions in a general news release to all major newspapers of general circulation in the Region V States on June 6, 1989. EPA Region V also provided copies of this proposed action to each discharger identified in the notice. As a result, EPA Region V received a total of 61 comments and has considered these comments in making the determinations set forth in today's notice.

With today's announcement, EPA Region V is providing notice of (1) certain approvals and disapprovals, required pursuant to section 304(l); and (2) proposed approvals and disapprovals with an opportunity for public comment on those tentative decisions. EPA Region V's rationale and response to specific comments are available, and can be reviewed with other information relating to a particular determination at the places set forth above.

This announcement also contains a number of corrections to typographical errors in the earlier notice under the heading "Corrections. . . ." in subpart A below. Additionally, substantive determinations that amend the prior notice are set forth in subpart B(2). Subpart C identifies the facilities for which EPA Region V has supplemented the record for clarification, and for which the period is reopened for review of the supplemental information for 30 additional days from the date of publication of this notice. Subpart D contains the listing of ICS status for all EPA Region V short listed facilities.

A. Corrections to the June 5, 1989, Public Notice

The June 5, 1989, *Federal Register* Notice contained a number of errors that occurred during the typesetting process. The following tables correct those errors found in the June 5th notice regarding the Long, Medium, Short and "C" lists, and ICSs:

Corrections to Approved Short List Waters
Page

24032 as published: Illinois; Lake Michigan;
4040002002; N. Chicago Refiners &
Smelters

Correction: Illinois; Pettibone Creek;
4040002002; N. Chicago Refiners &
Smelters

24032 as published: Ohio; Mahoning River;
503010-NA; Warren Consolidate
Industries

Correction: Ohio; Mahoning River; 503010-
NA; Warren Consolidated Industries

24032 as published: Ohio; Nimishillen
Creek; 5040001028; J&L Specialty
Products

Correction: Ohio; E. Branch Nimishillen
Creek; 5040001028; J&L Specialty
Products

24032 as published: Ohio; Nimishillen
Creek; 5040001028; LTV Massillon

Correction: Ohio; Tuscarawas River;
504001-NA; LTV Massillon (Now
Republic Engineered Steels)

*Corrections to EPA Region V Approvals of
ICSs*

Page

24032 as published: Omitted General
Motors ICS

Correction Add: Indiana; IN0001813;
General Motors; Cu, CN

24033 as published: Omitted Traverse City
WWTP ICS

Correction add: Michigan; MI0027481;
Traverse City WWTP; Hg

As published: Indiana; IN0026172; Roll
Coater

Correction: Indiana; IN0038172; Roll Coater
As published: Michigan; MI0021369;

Ishpeming Wwtp

Correction: Michigan; MI0044423;
Ishpeming Area Joint WWTP

As published: Ohio; OH0023400; Wauseon
Wwtp; Cr, Cu, Pb, Ni, Zn

Correction: Ohio; OH0023400; Wauseon WWTP; Cr, Cu, Pb, Ni, Zn, Hg, CN
As published: Ohio; OH0004600; White Consolidated Industries; Ag, CN, Pb
Correction: Ohio; OH0004600; White Consolidated Industries; Ag, Pb

Corrections To EPA Region V Disapprovals of Short List Waters

Page

24033 *as published:* Indiana; Phillips Ditch; 5120105-NA; Failed to list * * * from Wm Parker Co.

Correction: Indiana; Phillips Ditch; 5120105-NA; Failed to list * * * from Wm Pfarrer Co.

As published: Minnesota; Mississippi River; 7010206001; Failed to list * * * from Metro WWTP.

Correction: Minnesota; Mississippi River; 7010206001; Failed to list * * * from MWCC Metro WWTP

24034 *as published:* Wisconsin; Lake Michigan; 4040002002; Failed to * * * from Anderson Brass Co

Correction: Wisconsin; Lake Michigan; 4040002002; Failed to * * * from American Brass Co

Corrections to EPA Region V Disapprovals of ICSs

Page

24034 *as published:* Illinois; IN0032565; Anderson Co.

Correction: Indiana; IN0032565; Anderson Co.

As published: Illinois; IL0065195; Sauget Abt

Correction: Illinois; IL0065145; Sauget ABRTF

As published: Indiana; IN0049743; Wm Pfeffer Co.

Correction: Indiana; IN0049743; Wm Pfarrer Co.

As published: Indiana; IN0049743; Wm Pfarrer Co.

As published: Indiana; IN0022934; Frankfort STP

Correction: Indiana; IN0022934; Frankfort STP

B. Summary of EPA Region V Responses to Public Comments

1. Overview of Comments and EPA Region V Responses

a. In response to the June 5, 1989, Federal Register Notice, EPA Region V

received a number of telephone inquiries in addition to 61 written comments. Many dischargers objected to being listed because they claimed they were in compliance with all current National Pollutant Discharge Elimination System (NPDES) permit conditions and believed, therefore, that the notice improperly identified them. Section 304(l) was not intended to reflect the dischargers' status of compliance with permit conditions. In many cases, listed dischargers were, in fact, in compliance with all current permit conditions. The critical consideration for listing pursuant to this section was compliance with State water quality standards for toxic pollutants as of February 4, 1989, not compliance with permit conditions in effect on that date. In some cases, the permits contained the appropriate limits to protect water quality standards, but those limits were not yet effective. In other cases, state water quality standards may have changed during the term of the permit, and the permit had not been revised to reflect these new standards.

The requirements of the section 304(l) process could also result in new conditions and limitations or an acceleration of the schedule for attaining current permit conditions. A good example of this situation was encountered in several permits that were written to reflect EPA's effluent guidelines and then the State subsequently adopted more stringent state water quality standards. In such instances, the inclusion of the source on the 304(l) list would require reissuance or modification of the NPDES permit to reflect those more stringent requirements. In other instances, information gathered after issuance of the current permit indicated that the source met the criteria for listing set forth in section 304(l). In each instance, EPA Region V's response to the specific permittee sets forth the specific basis for listing and is available for review as part of the record.

b. Two commenters requested that EPA Region V conduct a public hearing for the purpose of obtaining further comments on EPA Region V's proposed actions. Based on the limited number of requests received, EPA Region V determined that the interest in such a hearing was not significant, and the commenters' concerns could be adequately addressed through individual responses.

c. Most of the written comments disagreed with the listing of certain waters and/or facilities and sought EPA Region V's decision to revise its proposed approvals or disapprovals. One commentator petitioned that EPA Region V add Area of Concern (AOC) water segments to the Section 304(l)(1)(B) short lists and disapprove state lists that do not include these waters. EPA Region V has reviewed each petition and comment and has provided each petitioner or commentator with a specific written response outlining EPA Region V's findings and rationale, except in cases where the comments were received after October 4, 1989. Even though individual responses were not sent for those comments received after October 4, 1989, EPA Region V did consider all the written comments in making today's decisions.

The following sections summarize the changes in the EPA Region V proposed approvals and disapprovals of the State decisions regarding lists and ICSs, which were announced on June 5, 1989. These changes were made as a result of the public comments received and additional discussions with each State. All of the comments, petitions, and EPA Region V responses are on file and available for public review.

2. Actions Taken in Response to Comments

a. The following waterbodies are removed from the short list due to removal of the point source from the facility short list (see paragraph g.):

WATERBODIES REMOVED FROM SHORT LIST

State	Waterbody name	Waterbody No.	Point source name
Wisconsin	Lake Michigan	4040020004	Milwaukee MSD South Shore.
Wisconsin	Lower Fox River	4030204001	Green Bay MSD and James River Corp.
Wisconsin	Peshtigo River	4030105002	Peshtigo STP and Badger Paper.

b. The following table reflects changes in the Pollutants of Concern (POC) for the waterbodies listed:

CHANGES IN POLLUTANTS OF CONCERN

State	Waterbody	Point source name	Final POCs
Illinois	Mississippi River	Sauget ABRTF	chlorobenzene, 4-nitrophenol
Indiana	Wabash River	Logansport STP	Cu, Pb, Zn.
Indiana	Boggs Creek	NWSC, USDN Crane	CN.
Ohio	Hurford Run	Ashland Petroleum	Cd, Cr, Cu, Pb, Sb, Ag, Zn.
Ohio	E B Nimishillen Cr	J&L Specialty Prod.	Cu, Ni.
Ohio	Paint Creek	Mead Paper Co.	Zn, 2,3,7,8-TCDD.
Ohio	Scippo Creek	PPG Industries	Cr.
Ohio	Doner Ditch	Timken Co.	Zn.
Ohio	Maumee River	Toledo Bay View WWTP	Cr, Ag.
Ohio	Mahoning River	Warren Consol. Indus.	Pb, Zn.
Wisconsin	Badfish Creek	Madison MSD	CN.
Wisconsin	Lake Michigan	Milwaukee MDS-JI	Cu.

c. The following ICS's are changed from disapproved status to approved:

APPROVED INDIVIDUAL CONTROL STRATEGIES

State and permit (ICS) No.	Point source name
Indiana:	
IN0001333	Dana Corporation.
IN0003073	Evansville East STP.
IN0022934	Frankfort STP.
IN0000205	LTV Steel.
IN0032468	Lafayette STP.
IN0023604	Logansport WWTP.
IN0023752	Michigan City WWTP.
IN0023884	New Albany STP.
IN0020451	North Vernon STP.
IN0024392	Princeton STP.
IN0000582	Stanadyne.
Michigan:	
MI0042170	Champion Int.—Quinnesec Mill.
MI0022802	Detroit WWTP.
MI0023647	Mt. Clemens WWTP.
MI0029815	MWCC Metro WWTP.
Ohio:	
OH0023833	City of Akron WWTP.
OH0000701	Bechtel McLaughlin.
OH0032727	N. Coast Brass & Copper.
OH0004502	Ranco—Plain City.
OH0083852	Sharon Steel.
OH0101079	Warren Consolidated Industries.
OH0000965	Whirlpool Corp.—Clyde.
OH0007358	Whirlpool Corp.—Marion.

d. The following ICSs have maintained disapproved status or are changed from approved status to disapproved because a final ICS was not issued by the required date (as is the case for General Motors AL):

DISAPPROVED INDIVIDUAL CONTROL STRATEGIES

State and permit (ICS) No.	Point Source Name
Illinois	
IL0065745	Sauget ABRTF.

DISAPPROVED INDIVIDUAL CONTROL STRATEGIES—Continued

State and permit (ICS) No.	Point Source Name
Indiana	
IN0001210	Alcoa LaFayette.
IN0045284	Allegheny Ludlum.
IN0032565	Anderson Co. Inc.
IN0003573	GMC Central Foundry.
IN0001813	General Motors AL.
IN00025861	Hamilton Glass.
IN0000094	Inland Steel.
IN0001244	Laketon Refining.
IN0021440	Roanoke STP.
IN0000281	USX—Gary.
IN0049743	WM Pfarrer Co.
Ohio	
OH0000027	Elkem Metals.
OH0025003	Elyria WWTP.
OH0007188	J&L Specialty Products.
OH006939	LTV Steel Co.
OH0026026	Lancaster WWTP.
OH0011363	Thomas Strip Steel.
OH0027740	Toledo Bay View WWTP.
OH0004600	White Consolidated Industries.

e. Another change involves the basis for disapproval of selected ICSs. The reason for disapproval of the ICS for Toledo Bay View WWTP is changed to read, "Failed to submit ICS for Cr, Ag."

f. In cases in which the State has issued a draft permit as an ICS, which EPA Region V originally approved, the permit must provide a compliance date for controlling pollutants of concern not later than June 4, 1992. In situations in which, in cooperation with the State, EPA Region V will issue the final permit as an ICS, a draft ICS needed to be developed before June 4, 1990. A final ICS must be issued no later than February 4, 1991. In the case in which EPA Region V issues an ICS after due notice to an NPDES-authorized State, the permit must require compliance with effluent limits sufficiently stringent to achieve the applicable water quality standards as soon as possible, which

EPA Region V expects to be no later than June 4, 1993.

g. The following ICSs are no longer required due to the fact that the pollutants of concern have been deleted and therefore there is no basis to keep the point source on the facility short list:

INDIVIDUAL CONTROL STRATEGIES NO LONGER REQUIRED

State and permit (ICS) No.	Point source name
Ohio	
OH0003301	Harvard Industries.
Wisconsin	
WI0024775	Milwaukee MSD South Shore.
WI0020991	Green Bay MSD.
WI0001261	James River Corp.
WI0026042	Weyerhaeuser Company.
WI0000663	Badger Paper Mill.
WI0030651	Peshigo STP.

3. Proposed Actions Taken in Response to Comments

As a result of public comments received, EPA Region V proposes to add a segment of the Lower Fox River (4030204006) in Wisconsin to the Short List based on impacts from the DePere WWTP (Permit No. WI0023787). The pollutants of concern consist of cyanide, copper, silver, and zinc. EPA Region V also proposes to require an ICS for DePere to adequately control the pollutants of concern. EPA Region V will receive public comments for a period of thirty (30) days following publication of this notice on this proposal to add this waterbody and to require an ICS. Written comments may be sent to the contact person identified above.

C. Additional Comment Time for Portions of the EPA Region V Decisions

EPA Region V will accept comments for thirty (30) days from publication of this notice on the following corrections:

Corrections To Approved Short List Waters

Illinois: Pettibone Creek; 4040002002; N. Chicago Refiners & Smelters
Ohio: Tuscarawas River; 504001-NA: LTV Massillon (Republic Engineered Steels)

In addition, for facilities listed below, as a result of the comments received during the notice period, additional information or reference to information intended to clarify the administrative record has been made available. EPA Region V will accept comments on such additional information for thirty (30) days following the date of publication of this notice for the following facilities:

PROPOSED APPROVALS

State and permit (ICS) No.	Point Source Name
Illinois: Consent Decree..... IL0002755.....	Outboard Marine Corp. North Chicago Refiners & Smelters.
Michigan: MI0000027.....	Mead Paper Corp—Escanaba.

PROPOSED APPROVALS—Continued

State and permit (ICS) No.	Point Source Name
Wisconsin: WI0037991..... WI0001848..... WI0003620..... WI0003565.....	Consolidated Papers Inc. Fort Howard Corporation. Nekoosa Paper Inc. Vulcan Materials.

PROPOSED DISAPPROVALS

State and permit (ICS) No.	Point Source Name
Illinois: IL0065745.....	Sauget ABRTF.
Ohio: OH0004481.....	Mead Paper Corp—Chillicothe.
Wisconsin: WI0000299.....	American Brass Co.

Finally, EPA Region V will accept comments for thirty (30) days on its proposed approval of the ICS for Michigan facility: BASF Pigments Division (MI0000761) issued in November, 1989. EPA Region V is taking

this action due to the fact that the issued permit is substantially different from the proposed permit which was conditionally approved as an ICS on June 5, 1989.

D. Listing of ICS Status for all EPA Region V Short Listed Facilities

The following table includes the final list of facilities on the section 304(L)(1)(C) list and EPA Region V's decisions regarding the ICSs. For the facilities listed in subpart C, above, where additional comments are being solicited, there is a "P" in the STATUS column. For the other facilities, a "C" in the STATUS column means that the comment period has not been reopened.

For the ICSs marked "C", EPA Region V is today making the final determinations that the limits in the ICSs are sufficient to achieve water quality standards. (EPA Region V is making no determination regarding the necessity of the particular limitations established by the States.)

USEPA APPROVAL/DISAPPROVAL ACTIONS—SECTION 304(L) SHORT LISTED ICSs

[A=Approved D=Disapproved C=Comment Period Closed P=Proposed Action]

ST	Waterbody Number	"Short List" Waterbody Name	Pollutants of Concern	NPDES No. [ICS]	Discharger Name	ICS Apprv.	Status
**STATE—ILLINOIS							
IL	7130005013	Lake Bracken & Brush Creek.....	Phenols.....	IL0035688	Koppers Co. Inc.....	A	C
IL	5120111011	Trib to Sugar Creek.....	Phenol, Cr+3, Cr+6.....	IL0004073	Marathon Oil Co.....	A	C
IL	4040002002	Pettibone Creek.....	Cu, Pb, Zn, Ni.....	IL0002755	N. Chicago Refiners & Smelters.....	A	P
IL	7110009002	Wood River.....	Cu, Cr, CN, Pb, Ni, Zn, Phenol.....	IL0000230	Olin Corp.....	A	C
IL	4060200-NA	Waukegan Harbor.....	PCB.....	IL0002267	Outboard Marine Corp.....	A	P
IL	7140101006	Mississippi River.....	Chlorobenzene, 4nitrophen.....	IL0065145	Sauget ABRTF.....	D	P
**STATE—INDIANA							
IN	5120108017	Elliot Ditch.....	PCB, Cu.....	IN0001210	Alcoa Lafayette.....	D	C
IN	5120204006	Big Blue River.....	Ni.....	IN0045284	Allegheny Ludlum.....	D	C
IN	4040001-NA	Trail Creek Trib.....	Cr.....	IN0032565	Anderson Co. Inc.....	D	C
IN	510201032	Eagle Creek.....	Cu.....	IN0001767	Bridgeport Brass.....	A	C
IN	5080003014	Brown Ditch.....	Cd, Cu, CN, Pb, Zn.....	IN0001333	Dana Corp.....	A	C
IN	4040001010	Grand Calumet.....	CN.....	IN0022829	East Chicago Stp.....	A	C
IN	5140202016	Ohio River.....	CN, Pb.....	IN0033073	Evansville East Stp.....	A	C
IN	5120201007	Wilson Ditch.....	PCB.....	IN0001341	Firestone.....	A	C
IN	5120107004	Prairie Ck.....	Cu.....	IN0022934	Frankfort Stp.....	A	C
IN	4040001010	Grand Calumet R E Branch.....	CN, Phenol.....	IN0022977	Gary Stp.....	A	C
IN	5120201032	Eagle Creek.....	Cu, CN.....	IN0001813	General Motors Al.....	D	C
IN	5120208018	Bailey Branch.....	Cu, PCB.....	IN0003573	GMC Central Foundry.....	D	C
IN	5120111001	Wabash River.....	Ag.....	IN0025861	Hamilton Glass.....	D	C
IN	4040001010	Grand Calumet R W Branch.....	Cu, CN.....	IN0023060	Hammond Stp.....	A	C
IN	4040001010	Indiana Harbor & Ship Canal.....	Pb, Zn.....	IN0000940	Inland Steel.....	D	C
IN	5120209010	Patokia River.....	Cd, Cu, CN, Pb.....	IN0020834	Jasper Stp.....	A	C
IN	5120107009	Wildcat Creek.....	Pb, Ni, CN, Cu, Cd, Zn.....	IN0032875	Kokomo Wwtp.....	A	C
IN	4040001010	Indiana Harbor & Ship Canal.....	CN, Cd.....	IN0000205	LTV Steel.....	A	C
IN	5120108018	Wabash River.....	Pb.....	IN0032468	Lafayette Stp.....	A	C
IN	5120104002	Eel River Trib.....	CN.....	IN0001244	Laketon Refining.....	D	C
IN	5120108-NA	Wabash River.....	Cu.....	IN0001074	Landis & Gyr.....	A	C
IN	7120001022	Travis Ditch.....	Cu, CN.....	IN0025577	Laporte Stp.....	A	C
IN	5120105009	Wabash.....	Cu, Pb, Zn.....	IN0023604	Logansport Wwtp.....	A	C
IN	4040001000	Trail Creek.....	Cu, Cd, Pb, Ni, Zn.....	IN0023752	Michigan City Wwtp.....	A	C
IN	5120110001	Whitlock Springs.....	Cu, Pb.....	IN0002445	Mid States Steel & Wire.....	A	C
IN	5140101001	Falling Run Cr.....	Cu, Pb.....	IN0023884	New Albany Stp.....	A	C
IN	5120207024	Vernon Park.....	Cu.....	IN0020451	North Vernon Stp.....	A	C
IN	4100004001	Harvester Ditch.....	Cu, Phenol.....	IN0000442	Phelps Dodge.....	A	C
IN	5120113012	Richland Creek.....	Cu, Hg.....	IN0024392	Princeton Stp.....	A	C
IN	5120101018	Little River.....	Cd, Cu.....	IN0021440	Roanoke Stp.....	D	C

USEPA APPROVAL/DISAPPROVAL ACTIONS—SECTION 304(f) SHORT LISTED ICSS—Continued

[A=Approved D=Disapproved C=Comment Period Closed P=Proposed Action]

ST	Waterbody Number	"Short List" Waterbody Name	Pollutants of Concern	NPDES No. [ICS]	Discharger Name	ICS Apprv.	Status
IN	7120001022	Travis Ditch	Cu, Pb, Zn	IN0038172	Roll Coater	A	C
IN	5120103007	Little Mississinewa R.	Cu, Ni	IN0003107	Sheller Globe Corp.	A	C
IN	5120201032	Eagle Creek	Cu	IN0032972	Speedway Stp	A	C
IN	4100003009	Cedar Creek	Cu	IN0000582	Stanadyne	A	C
IN	4050001020	Mather Ditch	Cu, Cr, Ni	IN0052400	Syndicate Store Fixtures	A	C
IN	5120208015	Boggs Creek	CN	IN0021539	USDN Crane Ammin. Depot	A	C
IN	5120104004	Eel River	Cu	IN0025453	United Technologies	A	C
IN	4040001010	Grand Calumet R E Branch	Phenols, Cr	IN0000281	USX	D	C
IN	4100003002	Teutsch Ditch	Cr, Cu, Zn	IN0000639	Universal Tool	A	C
IN	5120105-NA	Phillips Ditch	Cr, Cu, Zn	IN0049743	Wm Pfarrer Co	D	C
IN	5120106019	Walnut Cr	Cd, Cu, Pb, Ni, Zn	IN0024905	Warsaw Stp	A	C
**STATE—MICHIGAN							
MI	4050002013	Lake Macatawa	3,3-DCB	MI0000761	Base Pigments Div.	A	P
MI	4030108014	Menominee River	2,3,7,8-TCDD	MI0042170	Champion Int.-Quinnesec Mill	A	C
MI	4090004009	Detroit River	Cd, Cu, Pb, Hg, PCB	MI0022802	Detroit Wwtp	A	C
MI	4080201001	Tittabawasea River	2,3,7,8-TCDD	MI0000868	Dow Chemical Midland	A	C
MI	4050005009	Hayworth Creek	Cd	MI0002747	Federal Mogul	A	C
MI	4080204005	Flint River	Cd, CN, Pb, Hg, PCB	MI0022926	Flint Wwtp	A	C
MI	4080202012	Wolf Creek Trib	Hg	MI0027812	Hitachi Magnetics Corp.	A	C
MI	4020105029	Carp Creek	CN, Pb	MI0044423	Ishpeming Wwtp	A	C
MI	4050004005	Grand River	Cd, Zn	MI0023256	Jackson Wwtp	A	C
MI	4030110001	Escanaba River	2,3,7,8-TCDD	MI0000027	Mead Paper	A	P
MI	4030108001	Menominee River	Cu, Hg	MI0025631	Menominee Wwtp	A	C
MI	4090003006	Clinton River	Cd, Cr, Hg	MI0023647	Mt. Clement Wwtp	A	C
MI	4050005009	Hayworth Creek	Hg	MI0026466	St Johns Wwtp	A	C
MI	4070001019	St. Marys River	Cu	MI0024058	Sault Ste. Marie Wwtp	A	C
MI	4060101010	Ruddiman Creek	TCE	MI0004057	Sealed Power Corp.	A	C
MI	4060105007	Boardman River	Hg	MI0027481	Traverse City Wwtp	A	C
MI	4090004004	Detroit River	Hg	MI0021164	Trenton Wwtp	A	C
MI	4090005003	Willow Run Creek	Cd	MI0042676	Ypsilanti Community Utilities	A	C
**STATE—MINNESOTA							
MN	9030004013	Rainy River—7 Segments	2,3,7,8-TCDD	MN0001643	Boise Cascade	A	C
MN	7010206001	Mississippi River	Organics, NH ₃ -N	MN0000418	Koch Refinery	A	C
MN	7010206001	Mississippi River	PCBs	MN0029815	Metro Wwtp	A	C
MN	4010102001	St. Louis Bay	Hg	MN0049786	Western Lake Superior Sd.	A	C
**STATE—OHIO							
OH	4110002001	Cuyahoga	Cu, Cd, Zn, Phenol	OH0023833	City of Akron Wwtp	A	C
OH	5040001-NA	Hurford Run	Sb, Cd, Cr, Cu, Pb, Ag, Zn	OH0005657	Ashland Petroleum Co	A	C
OH	041100-NA	Hemming Ditch	Be, Cd, Cr, Cu, Zn, Hg, Ni, Se, Ag chloroform	OH0000701	Bechtel McLaughlin-Sandusky	A	C
OH	5030202007	Turtle Creek	Cd, Cu, Ni	OH0009911	Cincinnati Milacron	A	C
OH	4100008-NA	Oil Ditch	Cu, Pb, Zn, Hg, Ag	OH0002577	Cooper Tire & Rubber	A	C
OH	041202-NA	Lake Erie	CN	OH0000027	Elkem Metals	D	C
OH	4110001004	Black River	Cd, Cu, Cr, Ni, CN, Zn	OH0025003	Elyria Wwtp	D	C
OH	5040001028	East Br. Nimishillen Cr	Cu, Ni	OH0007188	J&L Specialty Products	D	C
OH	5030204027	Hocking River	Cu, Zn	OH0026026	Lancaster Wwtp	A	C
OH	5040001028	Tuscarawas R.	Cd, Cu	OH0006939	LTV Steel Co	D	C
OH	5040002004	Rocky Fork Mohican R	Cd, Cu, Zn, Hg, Cr	OH0026328	Mansfield Wwtp	A	C
OH	5060003001	Paint Creek	2,3,7,8-TCDD, Zn	OH0004481	Mead Paper Corp.	D	P
OH	041202-NA	Lake Erie	Cu	OH0032727	North Coast Brass & Copper	A	C
OH	4100007-NA	Six Mile Cr.	Cu, CN	OH0002852	Ohio Decorative Products	A	C
OH	5060002082	Scioppo Creek	Cr	OH0004251	PPG Industries	A	C
OH	5060001043	Big Darby Creek	Ag, Cd, Cr	OH0004502	Ranco-Plain City	A	C
OH	5060001032	Mill Creek	Cd, Cu, Ni, Ag	OH0005479	Ray Lewis & Son Inc.	A	C
OH	5030101-NA	Leslie Run Trib	Cr, Ti, CHCL ₃ , bis(2EH)-phthalate	OH0051489	Roshel Industries	A	C
OH	5060001035	Red Run Trib	Zn, Ag, Cu, Cr	OH0083852	Sharon Steel	A	C
OH	4110001004	Black River	Cu	OH0000426	Stanadyne Inc.	A	C
OH	5030103007	Mahoning	CN, Cu, CR*	OH0011363	Thomas Strip Steel	D	C
OH	5040001-NA	Donner Ditch	Zn	OH0004219	Timken Co.	A	C
OH	4100009001	Mallam River	Cr, Ag	OH0027740	Toledo Bay View Wwtp	A	C
OH	4110003008	Fields Brook	Cd, Cu, Hg, Zn, bis(2EH)-phthalate, 1,2, dichloroethane	OH0002283	Vygen Corp.	D	C
OH	503010-NA	Mahoning River	Pb, Zn	OH0101079	Warren Consolidated Industries	A	C
OH	410009-NA	North Turkey Foot Creek	Cr, Cu, Pb, Ni, Zn, Hg, Cr	OH0023400	Wauseon Wwtp	A	C
OH	4100011-NA	Raccoon Creek	Sb, Cu, Ni, Zn, Cr	OH0000965	Whirlpool Corp.-Clyde	A	C
OH	5060001932	Rockswale Ditch	Cd, Pb, Ti, Zn, Cu, Cr, Ag	OH0007358	Whirlpool Corp.-Marion	A	C
OH	5040002004	Rocky Fork Mohican R	Ag, Pb	OH0004600	White Consolidated Industries	D	C
**STATE—WISCONSIN							
WI	4040002002	Lake Michigan	Cu	WI0000299	American Brass Co.	D	P
WI	7070003036	Wisconsin River	2,3,7,8-TCDD	WI0037891	Consolidated Papers Inc.	A	P
WI	7070002023	Wisconsin River	Cu, Zn	WI0003450	Daishowa Chemicals	A	C
WI	4030204006	Lower Fox River	CN, Cu, Ag, Zn	WI0023787	Depere Wwtp	D	P

USEPA APPROVAL/DISAPPROVAL ACTIONS—SECTION 304(l) SHORT LISTED ICSS—Continued

[A=Approved D=Disapproved C=Comment Period Closed P=Proposed Action]

ST	Waterbody Number	"Short List" Waterbody Name	Pollutants of Concern	NPDES No. [ICS]	Discharger Name	ICS Apprv.	Status
WI	4030204002	Lower Fox River.....	polychlorinated biphenyls.....	WI0001848	Fort Howard Paper Co.....	A	P
WI	7090001057	Badfish Creek.....	CN.....	WI0024597	Madison MSD.....	A	C
WI	4040030001	Lake Michigan.....	Cu.....	WI0024767	Milwaukee MSD-Jones Is.....	A	C
WI	7070003033	Wisconsin River.....	2,3,7,8-TCDD.....	WI0003620	Nekoosa Papers Inc.....	A	P
WI	7090001028	Davy Creek.....	Cd, Cu, CN, Zn.....	WI0002241	Oconomowoc Electroplating.....	A	C
WI	7070003033	Wisconsin River.....	Cu.....	WI0003565	Vulcan Materials.....	A	P
WI	7120006011	Fox River (Illinois).....	Cd, Cu, Pb, CN, bis(2EH)phthalate, p-chloro-m-cresol.	WI0029971	Waukesha Stp.....	A	C
WI	7070002034	Wisconsin River.....	CN, Cu, Cd, Se.....	WI0025739	Wausau Wwtp.....	A	C

In regard to the section 304(l)(1)(B) list of waters, the EPA Region V will not accept additional comments on the listing decisions except in the following cases for the reasons discussed earlier in this notice: Lower Fox River (Reach number 4030204006), Pettibone Creek (Reach Number 4040002002), and Tuscarawas River (504001-NA).

E. Judicial Review

On June 27, 1990, the EPA Headquarters published a notice of final agency interpretation regarding when and if judicial review is appropriate for the above decisions made under section 304(1) of the Clean Water Act (55 FR 26201).

Any questions concerning the actions announced by EPA Region V today, may be directed to the individual identified above.

Dated: August 22, 1990.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 90-20779 Filed 9-4-90; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL DEPOSIT INSURANCE CORPORATION**OMB Action Regarding Information Collection**

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of OMB approval of information collection under the Paperwork Reduction Act of 1980.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the FDIC hereby gives notice that the Office of Management and Budget (OMB) has completed its review of the information collection identified below, and extended its approval of the collection for a three year period ending July 31, 1993.

Title: Notification of Rapid Growth.

Form Number: None.

OMB Number: 3064-0071.

Frequency of Response: On occasion.

Respondents: Insured banks wishing to undertake a special funding plans to increase their assets by more than seven and one-half percent during any consecutive three month period.

Number of Respondents: 650.

Number of Respondents Per

Respondent: 1.

Total Annual Responses: 650.

Average Number of Hours Per

Response: 2.5.

Total Annual Burden Hours: 1,625.

OMB Reviewer: Gary Waxman, (202)

395-7340, Office of Management and Budget, Paperwork Reduction Project (3064-0074), Washington, DC 20503.

FDIC Contact: Steven F. Hanft, (202)

893-3907, Office of the Executive Secretary, room F-400, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

ADDRESSES: A copy of the FDIC's submission to OMB may be obtained by calling or writing the FDIC contact listed above. Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact.

SUPPLEMENTARY INFORMATION: Insured banks wishing to undertake a special funding plan to increase their assets by more than seven and one-half percent during any consecutive three month period must give the FDIC Regional Director thirty days advance notice. Because such notice constitutes a collection under the Paperwork Reduction Act of 1980, the FDIC requested OMB approval under 5 CFR 1320, Control of Paperwork Burdens on the Public. FDIC's final regulation containing the collection (12 CFR 304.6) was published in advance of OMB action on the request with the proviso that notice of OMB action would be published after it was received.

Dated: August 30, 1990.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 90-20822 Filed 9-4-90; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-876-DR]

Major Disaster and Related Determinations, New Hampshire

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of New Hampshire (FEMA-876-DR), dated August 29, 1990, and related determinations.

DATED: August 29, 1990.

FOR FURTHER INFORMATION CONTACT:

Patricia S. Bowman, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-2661.

NOTICE: Notice is hereby given that, in a letter dated August 29, 1990, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288, as amended by Pub. L. 100-707), as follows:

I have determined that the damage in certain areas of the State of New Hampshire resulting from severe storms and flooding on August 7-11, 1990, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of New Hampshire.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for federal disaster assistance and administrative expenses.

You are authorized to provide Public assistance in the designated areas. Consistent with the requirement that federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the director of the Federal Emergency Management Agency under Executive Order 12148, and redelegated to me, I hereby appoint Mr. Edward A. Thomas of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of New Hampshire to have been affected adversely by this declared major disaster:

The counties of Belknap, Carroll, Cheshire, Coos, Grafton, Merrimack, and Sullivan for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.518, Disaster Assistance)

Jerry D. Jennings,

Acting Director, Federal Emergency Management Agency.

[FR Doc. 90-20820 Filed 9-4-90; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL RESERVE SYSTEM

Robert Avery, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 19, 1990.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63168:

1. Robert Avery, Mary Lou Avery, and Wilfred Avery, all of Eudora, Arkansas; to acquire an additional 14.56 percent of the voting shares of Delta Bancshares, Inc., Eudora, Arkansas, for a total of 25.98 percent, and thereby indirectly acquire The Bank of Eudora, Eudora, Arkansas.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Charles Thomas Doyle, Texas City, Texas; to acquire an additional 0.80 percent of the voting shares of American Independent Bancshares, Inc., Santa Fe, Texas, for a total of 10.52 percent, and thereby indirectly acquire Bank of Santa Fe, Santa Fe, Texas.

Board of Governors of the Federal Reserve System, August 29, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-20781 Filed 9-4-90; 8:45 am]

BILLING CODE 6210-01-M

First Blanchester Bancshares, Inc., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 25, 1990.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. First Blanchester Bancshares, Inc., Blanchester, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Blanchester, Blanchester, Ohio.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. New East Bancorp, Raleigh, North Carolina; to acquire 100 percent of the voting shares of New East Bank of New Bern, New Bern, North Carolina, a *de novo* bank.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. First Dakota Financial Corporation, Bismarck, North Dakota; to acquire 100 percent of the voting shares of Security State Bank, Beulah, North Dakota.

D. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Assistant Vice President) 101 Market Street, San Francisco, California 94105:

1. Interwest National Bancorp, Reno, Nevada; to become a bank holding company by acquiring 85.67 percent of the voting shares of Fallon National Bank, Fallon, Nevada.

Board of Governors of the Federal Reserve System, August 29, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-20762 Filed 9-4-90; 8:45 am]

BILLING CODE 6210-01-M

Request for Exemption from Tying Provisions; Firstar Corp.

Firstar Corporation, Milwaukee, Wisconsin ("Bancorp"), has requested, pursuant to section 106 of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1971 *et seq.*) ("section 106"), that the Board grant an exemption from the antitying provisions of section 106, in order to permit its lead banking subsidiary, First Wisconsin National Bank of Milwaukee, Milwaukee, Wisconsin ("National Bank"), to offer reduced annual fees and periodic interest rates on credit card accounts through its Elan Financial Services Division. This reduced consideration for credit card accounts would be available to customers who obtain certain traditional banking products from Bancorp's other subsidiary banks. Although section 106 permits a bank to fix or to vary the consideration for extending credit or furnishing services on condition that a customer also obtain a traditional banking service (loan, discount, deposit or trust service) from

that bank, it prohibits a bank from engaging in these same activities on condition that the customer obtain any additional credit or services from any other subsidiary of the bank's parent holding company. The Board may grant, however, an exception that is not contrary to the purposes of this provision.

Bancorp, is a multi-state bank holding company with consolidated assets of \$8.5 billion on June 30, 1990. It operates forty-one subsidiary banks and engages directly and indirectly in a variety of permissible non-banking activities. Bancorp's credit card operations are consolidated in the Elan Financial Services Division of National Bank. Bancorp proposes that National Bank provide credit cards on advantageous terms to customers who obtain certain traditional banking services from Bancorp's other subsidiary banks. Accordingly, the variation in consideration afforded by National Bank under the special reduced-rate credit card program would be conditional upon a customer obtaining additional banking services from Bancorp's subsidiary banks, and would, therefore, be barred by the literal terms of section 106 without exemption from the Board.

In support of its request for an exemption, Bancorp cites the precedents of (a) the Board's June 20, 1990, order approved requests by Norwest Corporation and NCNB Corporation for an exemption to permit their banks to offer a credit card at lower cost in conjunction with traditional banking services provided by their other subsidiary banks; and (b) the notice of proposed rulemaking issued by the Board on June 22, 1990, proposing to amend § 225.4(d) of the Board's Regulation Y (12 CFR 225.4(d)) to permit a bank owned by a bank holding company to vary the consideration (including the interest rates and fees) charged in connection with extensions of credit pursuant to a credit card offered by the bank on the basis of the condition of requirement that a customer also obtain a traditional banking service from another bank subsidiary of the card-issuing bank's holding company. National Bank and its affiliated banks will continue to offer checking deposit services and credit cards separately, and the traditional banking services will be available to their respective customers without a credit card on the same terms as with a credit card.

Notice of the request is published solely in order to seek the views of interested persons on the issues presented by the request and does not

represent a determination by the Board that the request meets or is likely to meet the standards of section 106. Any request for a hearing on this issue must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the request for exemption.

The request may be inspected at the offices of the Board of Governors. Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary of the Board of Governors of the Federal Reserve System, Washington, DC 20551 not later than October 5, 1990.

Board of Governors of the Federal Reserve System, August 29, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-20784 Filed 9-4-90; 8:45 am]

BILLING CODE 6210-01-M

PBC Bancshares, Inc., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 24, 1990.

A. Federal Reserve Bank of Atlanta
(Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *PBC Bancshares, Inc.*, Pelham, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Pelham Banking Company, Pelham, Georgia.

B. Federal Reserve Bank of St. Louis
(Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *National City Bancshares, Inc.*, Evansville, Indiana; to acquire 100 percent of the voting shares of Farmers Bancorp of Sturgis, Inc., Sturgis, Kentucky, and thereby indirectly acquire Farmers, State Bank, Sturgis, Kentucky.

2. *State First Financial Corporation*, Texarkana, Arkansas; to acquire at least 99.20 percent of the voting shares of Atlanta National Bank, Atlanta, Texas.

C. Federal Reserve Bank of Kansas City
(Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Blue Ridge Bancshares, Inc.*, Kansas City, Missouri; to become a bank holding company by acquiring the successor by merger to Blue Ridge Bank and Trust Company, Kansas City, Missouri, and Interim Blue Ridge Bank and Trust Company, Kansas City, Missouri.

Board of Governors of the Federal Reserve System, August 28, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-20783 Filed 9-4-90; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act (5 U.S.C. appendix 2), announcement is made of the following advisory committee scheduled to meet during the month of September 1990:

Name: Data Sources for Ambulatory Care Effectiveness Studies Advisory Committee

Date and Time: September 5, 1990, 10 a.m.

Place: Parklawn Building, room 18-05, 5600 Fishers Lane, Rockville, Maryland.

Meeting will be closed to the public.

Purpose: The Committee's charge is to provide technical review and evaluation of contract proposals to: Promote medical treatment effectiveness research on diseases that are generally managed on an outpatient basis (e.g. hypertension, diabetes, and

congestive heart failure), by identifying and improving access to databases of ambulatory care; provide an assessment of the feasibility of creating a central data source from existing computerized medical record systems; review available literature on research into medical treatment effectiveness in ambulatory settings that rely on computerized medical records; identify all computerized ambulatory record systems; and organize and conduct a conference involving the developers and custodians of these systems.

Agenda: The session will be devoted to the technical review and evaluation of contracts submitted in response to the Request for Proposals entitled "Data Sources for Ambulatory Care Effectiveness Studies." Because the Committee's meetings deal with proposal research contracts involving confidential proprietary information and personal information concerning individual research staff members, information exempt from mandatory disclosure, and in order to protect the free exchange of views and avoid undue interference with Committee and Department operations, these meetings will not be open to the public. This is in accordance with section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. appendix 2, 45 CFR 11.5(a)(6), and 41 CFR 315.604(d).

Anyone wishing to obtain information regarding this meeting should contact Mr. Barry N. Flaer, Contract Liaison Officer, Agency for Health Care Policy and Research, room 18-15, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-5690.

The agenda is subject to change as priorities dictate.

Note: Due to unforeseen circumstances, arrangements for this meeting were delayed so that more timely notification was not possible.

Dated: August 30, 1990.

J. Jarrett Clinton,

Acting Administrator, Assistant Surgeon General.

[FR Doc. 90-20885 Filed 9-4-90; 8:45 am]

BILLING CODE 4160-80-M

Alcohol, Drug Abuse, and Mental Health Administration

Current List of Laboratories Which Meet Minimum Standards to Engage in Urine Drug Testing for Federal Agencies

AGENCY: National Institute on Drug Abuse, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (53 FR 11986). Starting this month, a similar notice listing all currently certified laboratories will be published monthly,

and updated to include laboratories which subsequently apply and complete the certification process. If any listed laboratory fails to maintain its certification, it will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

FOR FURTHER INFORMATION CONTACT: Drug Testing Section, Division of Applied Research, National Institute on Drug Abuse, Room 9-A-53, 5600 Fishers Lane, Rockville, Maryland 20857.

SUPPLEMENTARY INFORMATION:

Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Public Law 100-71. Subpart C of the Guidelines, >Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies, sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in an every-other-month performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of NIDA certification are not to be considered as meeting the minimum requirements expressed in the NIDA Guidelines. A laboratory must have its letter of certification from HHS/NIDA which attests that it has met minimum standards.

In accordance with subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

Alpha Medical Laboratory, Inc., 405 Alderson Street, Schofield, WI 54476, 800-627-8200.

American BioTest Laboratories, Inc., Building 15, 3350 Scott Boulevard, Santa Clara, CA 95054, 408-727-5525.

American Medical Laboratories, Inc., 11091 Main Street, P.O. Box 188, Fairfax, VA 22030, 703-691-9100.

Associated Pathologists Laboratories, 4230 South Burnham Avenue, Suite 250, Las Vegas, NV 89119-5412, 702-733-7866.

Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801-583-2787.

Bio-Analytical Technologies, 2356 North Lincoln Avenue, Chicago, IL 60614, 312-880-6900.

Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Avenue, Miami, FL 33136, 305-325-5810.

Center for Human Toxicology, 417 Wakara Way-Room 290, University Research Park, Salt Lake City, UT 84108, 801-581-5117.

CBC Clinilab, 140 East Ryan Road, Oak Creek, WI 53154, 800-365-3840; (name changed: Chem-Bio Corporation).

Clinical Reference Lab, 11850 West 85th Street, Lenexa, KS 66214, 800-445-6917.

CompuChem Laboratories, Inc., 3308 Chapel Hill/Nelson Hwy., P.O. Box 12652, Research Triangle Park, NC 27709, 919-549-8263.

Doctors & Physicians Laboratory, 801 East Dixie Avenue, Leesburg, FL 32748, 904-787-9006.

DrugScan, Inc., P. O. Box 2969, 1119 Mearns Road, Warminster, PA 18974, 215-674-9310.

ElSohly Laboratories, Inc., 1215-1/2 Jackson Ave., Oxford, MS 38655, 601-236-2609.

Environmental Health Research & Testing, Inc., 1075 South 13th St., Birmingham, AL 35205-9998, 205-934-0985.

General Medical Laboratories, 36 South Brooks Street, Madison, WI 53715, 608-267-6267.

Harris Medical Laboratory, P. O. Box 2931, 1401 Pennsylvania Avenue, Fort Worth, TX 76104, 817-878-5600.

HealthCare/Preferred Laboratory, 3011 W. Grand Boulevard, Detroit, MI 48202, 313-875-2112.

Laboratory of Pathology of Seattle, Inc., 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206-386-2672.

Laboratory Specialists, Inc., 113 Jarrell Drive, Belle Chasse, LA 70037, 504-392-7961.

Laboratory Specialists, Inc., P. O. Box 4350, Woodland Hills, CA 91365, 800-331-8670; (name changed: formerly Abused Drug Laboratories).

Massey Analytical Laboratories, Inc., 2214 Main Street, Bridgeport, CT 06606, 203-334-6187.

Mayo Medical Laboratories, 200 S.W. First Street, Rochester, MN 55905, 800-533-1710/507-284-3631.

Med Arts Lab, 5419 South Western, Oklahoma City, OK 73109, 800-251-0069.

Med-Chek Laboratories, Inc., 4900 Perry Highway, Pittsburgh, PA 15229, 412-931-7200.

MedExpress/National Laboratory Center, 4022 Willow Lake Boulevard, Memphis, TN 38175, 901-795-1515.

MedTox Laboratories, Inc., 402 W. County Road D, St Paul, MN 55112, 612-636-7466.

Mental Health Complex Laboratories, 9455 Watertown Plank Road, Milwaukee, WI 53226, 414-257-7439.

Methodist Medical Center, 221 N.E. Glen Oak Avenue, Peoria, IL 61636, 309-672-4928.

MetPath, Inc., 1355 Mittel Boulevard, Wood Dale, IL 60191, 312-595-3888 ext. 671.

MetPath, Inc., One Malcolm Avenue, Teterboro, NJ 07608, 201-393-5000.

MetWest-BPL Toxicology Laboratory, 18700 Oxnard Street, Tarzana, CA 91356, 800-492-0800/818-343-8191.

National Center for Forensic Science, 1901 Sulphur Spring Road, Baltimore, MD 21227, 301-247-9100; (name changed: formerly Maryland Medical Laboratory, Inc.).

National Psychopharmacology Laboratory, Inc., 9320 Park W. Boulevard, Knoxville, TN 37923, 800-251-9492.

National Toxicology Laboratories, Inc., 1100 California Avenue, Bakersfield, CA 93304, 805-322-4250.

Nichols Institute Substance Abuse Testing (NISAT), 8985 Balboa Avenue, San Diego, CA 92123, 800-446-4728/619-694-5050; (name changed: formerly Nichols Institute).

Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800-322-3361.

PDLA, Inc., 100 Corporate Court, So. Plainfield, NJ 07080, 201-769-8500.

PharmChem Laboratories, Inc., 1505-A O'Brien Drive, Menlo Park, CA 94025, 415-328-6200/800-446-5177.

Poisonlab, Inc., 7272 Clairemont Mesa Road, San Diego, CA 92111, 619-279-2600.

Regional Toxicology Services, 15305 N.E. 40th Street, Redmond, WA 98052, 206-882-3400.

Roche Biomedical Laboratories, 1801 First Avenue South, Birmingham, AL 35233, 205-581-3537.

Roche Biomedical Laboratories, Inc., 101 Inverness Drive East, Englewood, CO 80112, 303-799-2822.

Roche Biomedical Laboratories, 6370 Wilcox Road, Dublin, OH 43017, 614-889-1061.

Roche Biomedical Laboratories, Inc., 1912 Alexander Drive, P.O. Box 13973, Research Triangle Park, NC 27709, 919-361-7770.

Roche Biomedical Laboratories, Inc., 1 Roche Drive, Raritan, NJ 08869, 800-631-5250.

SmithKline Beecham Clinical Laboratories, 7600 Tyrone Avenue, Van Nuys, CA 91405, 818-989-2520.

SmithKline Beecham Clinical Laboratories, 3175 Presidential Drive, Atlanta, GA 30340, 404-934-9205; (name changed: formerly SmithKline Bio-Science Laboratories).

SmithKline Beecham Clinical Laboratories, 506 E. State Parkway, Schaumburg, IL 60173, 708-885-2010; (name changed: formerly International Toxicology Laboratories).

SmithKline Beecham Clinical Laboratories, 400 Egypt Road, Norristown, PA 19403, 800-523-5447; (name changed: formerly SmithKline Bio-Science Laboratories).

SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214-638-1301; (name changed: formerly International Clinical Laboratories).

South Bend Medical Foundation, Inc., 530 North Lafayette Boulevard, South Bend, IN 46801, 219-234-4176.

Southgate Medical Laboratory, Inc., 21100 Southgate Park Boulevard, Cleveland, OH 44137, 800-338-0166.

St. Anthony Hospital (Toxicology Laboratory), P.O. Box 205, 1000 North Lee Street, Oklahoma City, OK 73102, 405-272-7052.

St. Louis University Forensic Toxicology Laboratory, 3610 Rutgers Avenue, St. Louis, MO 63104, 314-577-8628.

Finally, CompuChem Laboratories, Inc. - Western Division (formerly ChemWest Analytical Laboratories)

consolidated its drug testing operations in CompuChem Laboratories, Inc., Research Triangle Park, North Carolina, effective August 8, 1990.

Richard A. Millstein,

Deputy Director, National Institute on Drug Abuse.

[FR Doc. 90-20823 Filed 9-4-90 8:45 am]

BILLING CODE 4160-20-D

Food and Drug Administration

Request for Nominations for Members on Public Advisory Committee; Veterinary Medicine Advisory Committee

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for members to serve on the Veterinary Medicine Advisory Committee in FDA's Center for Veterinary Medicine. Two vacancies will occur on the committee on October 31, 1991.

DATES: No cutoff date is established for receipt of nominations.

ADDRESSES: All nominations for membership should be submitted to Gary E. Stefan (address below).

FOR FURTHER INFORMATION CONTACT: Gary E. Stefan, Center for Veterinary Medicine (HFV-244), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-0830.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations for members to serve on the Veterinary Medicine Advisory Committee. The function of the committee is to review and evaluate available information concerning the safety and effectiveness of marketed and investigational new animal drugs, feeds, and devices for use in the treatment and prevention of animal disease and increased animal production, and make appropriate recommendations to the Commissioner of Food and Drugs.

Criteria for Members

Persons nominated for membership on the Veterinary Medicine Advisory Committee shall have adequately diversified experience appropriate to the work of the committee in such fields as companion animal medicine, food animal medicine, avian medicine, microbiology, biometrics, toxicology, pathology, pharmacology, animal science, and chemistry. The specialized training and experience necessary to qualify the nominee as an expert

suitable for appointment is subject to review, but may include experience in medical practice, teaching, and/or research relevant to the field of activity of the committee. The term of office is 4 years.

Nomination Procedures

Any interested person may nominate one or more qualified persons for membership on the advisory committee. Nominations shall state that the nominee is willing to serve as a member of the advisory committee and appears to have no conflict of interest that would preclude committee membership. FDA asks potential candidates to provide detailed information concerning such matters as employment, financial holdings, consultancies, and research grants or contracts to permit evaluation of possible sources of conflict of interest.

FDA has a special interest in assuring that women, minority groups, and the physically handicapped are adequately represented on advisory committees and, therefore, extends particular encouragement to nominations for appropriately qualified female, minority, and handicapped candidates.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. App. 2) and 21 CFR part 14, relating to advisory committees.

Dated: August 30, 1990.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 90-20867 Filed 9-4-90; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 90G-0249]

NutraSweet Co.; Filing of Petition For Affirmation of GRAS Status

AGENCY: Food and Drug Administration, HHS

ACTION: Notice

SUMMARY: The Food and Drug Administration (FDA) is announcing that The NutraSweet Co. has filed a petition (GRASP 0G0386), proposing to amend § 184.1496(b)(2) to allow for the generally recognized as safe (GRAS) use of microparticulated protein products as direct human food ingredients in additional food categories.

DATES: Comments by November 6, 1990.

ADDRESSES: Written comments to the docket Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: JoAnn Ziyad, Center for Food Safety

and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-426-9463.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409 (21 U.S.C. 321(s), 348)) and the regulations for affirmation of GRAS status in § 170.35 (21 CFR 170.35), notice is given that The NutraSweet Co., 1751 Lake Cook Rd., Deerfield, IL 60015, has filed a petition (GRASP 0G0366), proposing that § 184.1498(b)(2) be amended to affirm that microparticulated protein product(s) are GRAS for use as direct human food ingredients in additional food categories.

The petition has been placed on display at the Dockets Management Branch (address above).

Any petition that meets the requirements outlined in §§ 170.30 and 170.35 (21 CFR 170.30 and 170.35) is filed by the agency. There is no pre-filing review of the adequacy of data to support a GRAS conclusion. Thus, the filing of a petition for GRAS affirmation should not be interpreted as a preliminary indication of suitability for GRAS affirmation.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the *Federal Register* in accordance with 21 CFR 25.40(c).

Interested persons may, on or before November 6, 1990, review the petition and/or file comments (two copies, identified with the docket number found in brackets in the heading of this document) with the Dockets Management Branch (address above). Comments should include any available information that would be helpful in determining whether the substances are, or are not, GRAS for the proposed use. A copy of the petition and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 23, 1990.

Douglas L. Archer,
Acting Deputy Director, Center for Food
Safety and Applied Nutrition.

[FR Doc. 90-20787 Filed 9-4-90; 8:45 am]

BILLING CODE 4160-01-M

International Symposium; Biological Products Freeze-Drying and Formulation

AGENCY: Food and Drug Administration HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) and the International Association of Biological Standardization are announcing a forthcoming symposium on biological products freeze-drying and formulation.

DATES: The symposium will be held on October 24, 25, and 26, 1990, 8:30 a.m.

ADDRESSES: The symposium will be held at the Masur Auditorium, Warren Grant Magnuson Clinical Center, National Institutes of Health, Bethesda, MD.

FOR FURTHER INFORMATION CONTACT: Kathleen Isner, Prospect Associates, 1801 Rockville Pike, Suite 500, Rockville, MD 20852, 301-468-6555.

or

FOR FURTHER SCIENTIFIC INFORMATION CONTACT: Joan C. May, Center for Biologics Evaluation and Research (HFB-740), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301-496-4570.

SUPPLEMENTARY INFORMATION: On October 24, 25, and 26, 1990, the Center for Biologics Evaluation and Research, FDA, in conjunction with the International Association of Biological Standardization is sponsoring an international symposium on biological product freeze-drying and formulation.

The purpose of this symposium is to bring together new information on freeze-drying and formulation of vaccines and other biological products including products resulting from recombinant and hybridoma technologies.

Presentations of research papers are being scheduled on each of the 3 days. The topics include:

- (1) Principles of formulation and freeze-drying
- (2) Principles of protein and water,
- (3) Condition and criteria for effective formulation and freeze-drying,
- (4) Formulating and freeze-drying bacterial vaccines and other biological products, and
- (5) Formulating and freeze-drying biological products produced by recombinant and hybridoma technologies.

To obtain a copy of the tentative agenda and preregistration packet, notify either contact person listed above.

Dated: August 28, 1990.

Ronald G. Chesemore,
Associate Commissioner for Regulatory
Affairs.

[FR Doc. 90-20789 Filed 9-4-90; 8:45 am]

BILLING CODE 4160-01-M

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting: San Francisco District Office, chaired by Ronald Johnson, District Director. The topic to be discussed is food labeling.

DATES: Friday, October 5, 1990, 8:30 a.m. to 1 p.m.

ADDRESSES: Senior Citizens Center of Washoe County, 1155 East Ninth St., Conference Rm., Reno, NV 89512.

FOR FURTHER INFORMATION CONTACT: Lula M. Holland, Consumer Affairs Officer, Food and Drug Administration, 50 United Nations Plaza, rm. 524, San Francisco, CA 94102, 415-556-1364.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's district offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: August 29, 1990.

Alan L. Hoeting,
Acting Associate Commissioner for
Regulatory Affairs.

[FR Doc. 90-20788 Filed 9-4-90; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

[MB-034-FN]

RIN 0938-AE16

Medicaid Program; MMIS System Performance Review Revisions

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final notice.

SUMMARY: This notice revises the system performance review standards, procedures and methodologies previously published in the *Federal Register* on June 30, 1981 (46 FR 33653) that we have used to evaluate State Medicaid Management Information Systems. These revisions are intended

to improve the economy, effectiveness, and efficiency of the Medicaid program.

EFFECTIVE DATE: October 5, 1990.

FOR FURTHER INFORMATION CONTACT:

Rick Friedman, (301) 966-3292.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1903(r) of the Social Security Act (the Act) requires the Medicaid program in most States to have in place a mechanized claims processing and information retrieval system as described in section 1903(a) of the Act. Section 1903(a) authorizes Federal matching funds at 75 percent for the operation of such a system, as long as it remains approved by HCFA. The system is referred to as the Medicaid Management Information System, or MMIS.

Section 1903(r) of the Act requires us to review each system at least once every three years to determine whether it meets our performance standards and systems requirements. Systems failing this system performance review (SPR) are subject to a reduction in Federal matching funds. States must be informed of any changes in performance standards by June 30th preceding the beginning of the Federal fiscal year in which we intend to apply the changes.

The performance standards are statements of desired outcomes and have been made up of subordinate activities or specific tasks capable of direct measurement. Originally, each standard consisted of one or more elements, which, in turn, consisted of two or more factors.

In measuring performance under the SPR we used a tiered scoring system. The MMIS had to pass every standard in order to pass the SPR. In addition, the MMIS had to receive a minimum score on each of the elements that made up the standard.

Our experience showed that the original SPR had a number of shortcomings. In June 1988, we notified State agencies of our intentions to revise the SPR, sent them a pilot SPR guide and solicited their comments. We also tested the pilot project in five States for fiscal year 1989; we reviewed their systems against the pilot SPR.

II. Provisions of the Proposed Notice

On June 30, 1989 (54 FR 22755), we published a proposed notice to revise the SPR to be similar to the pilot project.

A. Performance Standards

We proposed to retain unchanged the current seven performance standards. In addition, we proposed to add a new standard number 8, concerning third

party liability, discussed below. The proposed standards consisted of the following:

- Standard 1—Eligibility.

An accurate system of recipient eligibility information must be provided.

- Standard 2—Support files.

An accurate and accessible system of files must be provided to support system operations.

- Standard 3—Orderly and timely claims processing.

Claims must be processed in an orderly and timely manner from initial receipt through issuance of claims determinations.

- Standard 4—Accurate claims processing and review.

Claims data must be accurately processed and reviewed.

- Standard 5—Management and Administrative Reporting Subsystem (MARS).

The MARS must be efficiently and effectively operated in order to provide support to the management review, evaluation, and decision-making processes.

- Standard 6—Surveillance and Utilization Review Subsystem (SURS).

The operation of a SURS must provide comprehensive health care delivery and utilization data for program management, reveal defects in the quality of care, and reveal suspected instances of provider or recipient fraud or abuse.

- Standard 7—MMIS administration.

Overall effectiveness in carrying out MMIS administrative responsibilities must be demonstrated.

- Standard 8—Third party liability (TPL).

The MMIS must perform functions and provide data to support cost avoidance and the collection of payments from liable third parties and to assure that Medicaid is the payer of last resort.

B. Elements and Factors

The elements were specifically written to measure the standards to which they were tied. We believe that measuring accomplishments in terms of factors accurately determines whether a system meets performance standards. We do not believe that measurement of accomplishments in terms of elements is necessary or efficient, or improves accuracy of what needs to be measured. We proposed to delete the elements from the SPR.

We proposed that the factors would not be directly associated with any particular standards; i.e., passing a given standard would not depend on passing a given grouping of factors.

Most of the factors that we proposed to use in the SPR were identical to those used in past SPRs. We listed a number of illustrative factors.

C. Scoring System

Under the proposed percentage scoring system, the sum of all factors (the final cumulative percentage score), would never exceed 100 percent. The system would determine the percent correct for each factor and would multiply that figure by a weight (either 1, 2, or 3) and a feature called a multiplier, which reflect the factors' relative importance within the SPR. Then the system would add all the weighted factor scores together to produce a final cumulative percentage score for the SPR. We proposed to designate a small number of critical factors, with a higher weight than non-critical factors. We proposed a pool of potential critical factors from which we intended to choose at least five critical factors.

To be approved, we proposed that each MMIS would have to achieve a minimum cumulative percentage score and pass all critical factors. The State agencies would be notified of the designated critical factors by the June 30th preceding the beginning of the review period in which they are effective. This notification also would include the minimum acceptable performance levels (APLs) for all factors and those APLs would be used for producing the final cumulative percentage score.

We proposed a reasonable number of factors to be 36, the total value of which equalled 100 percent. A minimum cumulative percentage score would be established at 90 percent, and a minimum factor score (APL) of 90 percent would be established for each critical factor. If the minimum cumulative percentage score meets or exceeds 90 percent and the minimum factor score for each critical factor meets or exceeds 90 percent, the system would be reapproved.

This proposal departed from the previous scoring system in which the cumulative score was determined on a standard and element level for purposes of reapproval or disapproval.

By June 30 preceding the beginning of the review period to be evaluated, we proposed to send States the following information:

- All factors to be used in the SPR. (Some factors might not apply to all States, depending on the State's particular system).

- The relative weight applicable to each factor (1, 2, or 3). The total score of all factors, after weighting and

application of the multiplier, would never exceed 100 percent.

- The identification of factors designated as critical and the minimum APL for each critical factor.

- The minimum final cumulative percentage score needed to pass the SPR.

The review would be conducted for each individual factor. We would assess the State's performance under each factor and note the percentage of correct activities. For purposes of the final cumulative percentage score, each factor's percentage score would be weighted using the factor weight and multiplier and then added together to calculate overall performance. For critical factors the individual factor's percentage correct would be used to determine if the factor meets the minimum APL.

In some instances, HCFA might determine that a factor is inapplicable to a State's MMIS. The weights assigned to factors that are inapplicable in a given State would be excluded from the total of all the factor weights, and the total weighting and multipliers would be readjusted so that maximum final cumulative percentage score is again 100 percent.

III. Comments and Responses

We received timely comments from nine State Medicaid agencies and the Systems Technical Advisory Group (STAG).

Comment: Four commenters were concerned that the cumulative percentage score of 90 percent for passing the SPR was too high. One commenter also suggested a gradual increase in the scoring from 75 percent after more experience has been gained with the increased importance of individual factors in the new scoring system.

Response: Before we set the cumulative passing score at 90 percent in the proposed notice, we were aware of the pilot State's scores. We also believe that the experience gained over a year's period from the pilot project was sufficient both in time and substance to evaluate the effectiveness and reliability in satisfactorily measuring the review requirements. Based on the State's performance of the FY 1989 pilot SPR, under which all the pilot States passed, the 90-percent passing score does not appear to be unreasonable. We believe 90 percent is actually quite low in the context of a 10-percent error rate for a system as highly automated as MMIS. This passing score is also appropriate given that the Federal government is reimbursing MMIS costs at 75 percent as compared

to 50 percent for regular Medicaid administrative costs.

Comment: Five commenters stated that they were opposed to the proposed critical factor scoring method, which placed too much emphasis on a few areas of the entire SPR process. Some of the commenters suggested that the scoring system should grade the overall performance of an MMIS, which can be accurately reflected in a cumulative score with appropriate factor weighting; i.e., the more important factors would be weighted more heavily.

Response: We accept this comment. After considerable consultation with the members of the STAG and review of the comments we received concerning the critical factors scoring requirement, we agree that it is appropriate not to include this concept in the revised SPR. Instead, we have assigned weights for each factor of 1, 2, or 3, depending on their importance, and will only require an overall score of at least 90 for reapproval of a State's MMIS.

Comment: Three commenters objected to conferring a score of zero for any factor that fails to achieve an acceptable performance level of 70 percent or greater. For example, if a factor receives a rating of 65 percent no points would be awarded under the SPR for that factor when computing the cumulative percentage score.

Response: We do not agree that we should change this policy. In changing the scoring mechanism for the revised SPR, including elimination of the critical factors, we wanted to ensure that the States' systems could still pass the SPR even if they were to abandon a number of review areas under the SPR or perform below the minimum acceptable performance level (70 percent) in other SPR review areas. The SPR itself has been streamlined, and all performance measures retained in it are important. Acceptable MMIS operation across-the-board is expected given the enhanced or premium rate of Federal reimbursement for MMIS costs. Also, SPR failure triggers only a reduction in the level of enhanced funding, and that funding may be restored if the State achieves a passing score in the next year's SPR.

Comment: One commenter stated that the notice did not give an intended implementation date and urged that we not implement the proposed SPR until we review it against the pilot projects.

Response: We did review the pilot results before publishing the notice on June 30, 1989. All five participating States passed with scores over 90 percent.

Comment: One commenter requested an explanation on how we determined the number of review factors and why

that number of factors was more reasonable than any other number.

Response: We did not use any predetermined number in establishing how many factors would be in the SPR. We wanted to ensure comprehensive coverage in sufficient depth, and the SPR reflects extensive consultation within HCFA and with the STAG. State and Federal resource constraints were also weighed. We did not receive any comments to indicate that the factors presented too heavy a burden or called for resources beyond those available or that they were too few in number.

Comment: One commenter was concerned that many factors do not relate to the actual MMIS, such as update schedules. The commenter believes we should reevaluate the overall definition and concept of the SPR to insure that systems and not data control or manual procedures are the real purpose of the SPR.

Response: We do not agree with this comment. The SPR is focused primarily on those MMIS activities for which a State receives enhanced FFP, although, in order to assess the degree to which the MMIS supports and is integrated into overall Medicaid program administration, some parts of the review may extend into areas that are not part of the MMIS *per se*. All activities reviewed through the SPR are considered crucial to the Medicaid program and, therefore, will contribute to the determination on whether or not the MMIS should be reapproved. The factors included in the SPR are not the only requirements a State must meet, but rather the ones that a State must meet in a given review period in order to avoid a reduction in enhanced funding under section 1903(r) of the Act.

Comment: Three commenters remarked about the revised SPR format and the use of standards and factors without elements. One commenter stated that the notice leaves the relationship between factors and standards unclear and that it appears that standards could be omitted altogether without changing the SPR. The other two commenters made positive comments. The second commenter indicated that the outline of the review factors was very good and noted that the specific guidelines are better defined to more fairly outline the review and scoring mechanisms. The third commenter liked our deleting the elements and felt that the format that used only factors was very straightforward and more accurately defined the activities to be measured. The commenter also noted that the

format will offer flexibility for adding or deleting factors if the need arises.

Response: We do not agree with the first comment. Standards are required by section 1903(r) of the Act and represent broad statements in the performance of an MMIS. As we mentioned in the proposed notice, we believe that measuring accomplishments in terms of factors will accurately determine whether a system meets those performance standards. We also noted that the factors will not be directly associated with just one particular standard, as they were in preceding SPRs. Under the revised SPR, we have eliminated scoring on the standard level and will score only the factors, individually and cumulatively.

Comment: One commenter had concerns over a part of the regulatory impact statement in the published notice. It stated, in pertinent part, that some States that previously passed the SPR may fail, or vice-versa, and that failing States would be subject to a reduction in Federal matching funds. The commenter also asked us to determine the number of States that may potentially fail the performance review.

Response: States with failing systems have been subject to a reduction in their enhanced funding since the beginning of the SPR program. The regulatory impact statement is routinely required to be included in the notice to indicate whether the potential reductions in Federal matching funds or any other effects from the notice require a regulatory impact analysis. We determined that a regulatory impact analysis was not necessary.

The results from the pilot SPR have been completed and analyzed with all participants passing which scores above 90 percent. We have gained sufficient information to determine that the revised review requirements are fair and reasonable. Accordingly, we do not believe that it is either practical or appropriate to contemplate how many States may potentially fail the SPR. However, we do believe all States can and should pass the SPR.

Comment: One commenter requested us to include the sampling methodologies in the notice that are used for selecting cases for review during the SPR.

Response: We have not made any major changes to the sampling methodologies from those used in past performance reviews. The methodologies are described in each year's SPR Guide, which is distributed to all States one calendar quarter before the affected review period.

Comment: One commenter asked whether written documentation

supporting all review findings and conclusions will be supplied to a State after a problem has been identified.

Response: We appreciate the commenter's concern for appropriate documentation. It is imperative that the results of each review factor found deficient be carefully documented by the HCFA regional office (RO). When a State needs information or assistance, it should contact its servicing RO for the appropriate help or advice pertinent to resolving the problem. Those problems identified as directly related to the review findings and conclusions will be documented by the RO. The RO will timely notify the State in writing on the results of the review, which will include information useful for initiating corrective action when needed.

Comment: One commenter wanted to know if there are any assurances for the States that the deadlines for supplying documentation will be reasonable.

Response: Under section 11410.6 of the SPR guide, cited by the commenter, ROs should always allow States the maximum amount of time possible to assemble and submit documentation, but they are not required to extend deadlines once they have been set. At times the deadlines may be different for each State based on the schedules the ROs have set for each review. Often the ROs can be flexible in accommodating each State's individual needs. However, States are always responsible for furnishing timely and accurate documentation to the ROs. Once a deadline for submitting documentation has passed, it is permissible for an RO to proceed with scoring on the basis of the information in its possession. States are encouraged to contact their servicing RO early in the cycle to discuss when the documentation will be due, if they have concerns about meeting any deadline.

Comment: One commenter was concerned about factor 30 and trauma code edits. He indicated that the ICD-9-CM range includes codes other than those that indicate an accident, injury, or other trauma and suggested that reference to those extraneous codes should be eliminated. The four examples cited by the commenter were: 911.4-Nonvenomous insect bite without infection; 912.2-Blister without infection; 913.6-Splinter without infection; and 917.0-Friction burn without infection.

Response: On February 27, 1987, we published final regulations that were effective on May 28, 1987 and that affected the area on trauma code edits. The preamble to that final rule indicated that, if HCFA received substantial complaints regarding diagnosis and trauma code edits, we would reevaluate

the code requirements. We did receive several comments from State Medicaid agencies. In response to those comments, the pertinent parts of the regulations in 42 CFR 433.138(e) (55 FR 1425, January 16, 1990) were revised to allow States to seek authorization from HCFA to discontinue specific diagnosis/trauma code edits.

States must submit documentation to their servicing RO that shows the State Medicaid agency's pursuit of the specific codes have been found to be not cost-effective. Each State also should request approval by the HCFA RO to exclude those codes. The RO then will determine whether it will formally grant a waiver for each of the specific codes that the State has requested to eliminate.

Comment: One commenter was concerned about the methods of evaluation under factor 31 asking for assurances that the third party liability (TPL) file records agree with TPL information on the claim. The commenter felt this would be a costly systems edit for the State and he suggested we cite the authority for this.

Response: There is a need to assure that there are accurate updates to the TPL information that is in the system. If there is a discrepancy between the TPL file record and the TPL information on the claim, this should be investigated and the system should be updated, if appropriate. In support of this, section 1902(a)(25) of the Act requires States to "take all reasonable measures to ascertain the legal liability of third parties * * *"; i.e., investigate discrepancies and update files, where appropriate. In further support of this, the HCFA regulation published on January 16, 1990 (55 FR 1425) concerns State plan requirements and other provisions relating to State TPL programs. That regulation states the pertinent system requirements relevant to State TPL efforts and indicates, under system requirement 1, that the system must have the capability to receive and maintain identification of third party resources from all sources.

Comment: One commenter was concerned about factor 35 regarding the review of claims for States required to operate a mandatory claims processing assessment system (CPAS). The commenter inquired if States are to assume that this factor will not be reviewed if they are not operating a mandatory CPAS at the time of review. The commenter also asked if this factor would be reviewed for a State that had been operating a mandatory CPAS at some time during the review period, but returned to the alternate CPAS within that same review period.

Response: This factor was included in the review materials to ensure appropriate oversight of the mandatory CPAS in States in which it is required. This factor is not scored but is only used to determine whether a State that is required to operate mandatory CPAS must continue to operate that kind of a CPAS or whether the State can be allowed to operate an alternate CPAS. A State that has returned to the alternate CPAS within the same review period during which it had a mandatory CPAS will not be reviewed under this factor.

Comment: One commenter found factors 13 and 14, concerning timely claims payment, to be identical, except that one concerned 30 days and the other 90 days, and thought that if we meant both as requirements, we should say so unambiguously.

Response: Without the regulations and SPR guide as background, reading these two seemingly identical factors and knowing whether an MMIS must comply with both can be confusing; we regret any possible ambiguity. The two factors cited were used to illustrate, in general, the material that appears in greater detail in the SPR Guide. Both are requirements that are found in regulations at 42 CFR 447.45 and have been part of the performance review since its inception. An MMIS is reviewed against all factors; therefore, it is reviewed to see that 90 percent of all clean practitioner claims are paid within 30 days of receipt and that 99 percent of those claims are paid within 90 days of receipt.

IV. Summary

Except for the removal of the concept of designating certain factors as critical, we are adopting the revisions to the SPR proposed on June 30, 1989 (54 FR 22755) as final.

V. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any notice that meets one of the E.O. criteria for a "major rule"; that is, that would be likely to result in—

- An annual effect on the economy of \$100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-

based enterprises in domestic or export markets.

One potential impact due to the changes in this notice is that a State agency may fail the SPR even though it currently passes it, or it may pass under the new scoring system although it currently fails the SPR. While State Medicaid agencies with systems failing the SPR will be subject to a reduction in Federal matching funds, 42 CFR 433.113(b) requires that only a proportion of that part of a State's FFP that pertains to expenditures for compensation and training of skilled professional medical personnel and support staff and for general administration be reduced. We have determined that neither of these potential reductions nor any other effects from this final notice will meet any of the criteria of the Executive Order 12291. Thus, a regulatory impact analysis is not required.

B. Regulatory Flexibility Act (RFA)

We generally prepare a regulatory flexibility analysis that is consistent with the RFA (5 U.S.C. 601 through 612) unless the Secretary certifies that a notice would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all providers and suppliers are treated as small entities.

This notice will not have a direct effect on providers and suppliers; however, it is possible that some of the standards may have an indirect effect on them. For example, a State agency's attempts to meet these standards may produce a more efficient process for eligibility determinations and orderly and timely claims processing. We expect these indirect effects to be positive for providers and suppliers; however we do not expect these effects to be significant. For these reasons, we have determined, and the Secretary certifies, that this final notice will not have a significant economic impact on a substantial number of small entities. We have, therefore, not prepared a regulatory flexibility analysis.

C. Rural Hospital Impact Statement

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a final notice may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

We are not preparing a rural impact statement since we have determined, and the Secretary certifies, that this final notice does not have a significant economic impact on the operations of a substantial number of small rural hospitals.

VI. Paperwork Burden

These changes do not impose paperwork collection requirements. Consequently, they need not be reviewed by the Executive Office Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Authority: Section 1903(r) of the Social Security Act (42 U.S.C. 1396(r)).

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance)

Dated: July 26, 1990.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

[FR Doc. 20865 Filed 8-30-90; 2:59 pm]

BILLING CODE 4120-01-M

Statement of Organization, Functions, and Delegations of Authority

Part F. of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA), (Federal Register, Vol. 53, No. 124, pp. 24366-24368, dated Tuesday, June 28, 1988) is amended to reflect the realignment of the subordinate components within the Office of Legislation and Policy (OLP). OLP reports directly to the HCFA Administrator and provides leadership and executive direction to the legislative planning and policy analysis programs within HCFA. OLP has been reorganized in order to more effectively carry out its mission. The Office of Policy Analysis and the Office of Legislation and Congressional Affairs, and the subordinate components of each office, are abolished and replaced by a new organizational structure. The new structure will consist of six components reporting directly to the Director, OLP. The new components are the Division of Hearings and Policy Presentation, the Division of Congressional Affairs, the Division of Medicare Part A Analysis, the Division of Medicare Part B Analysis, the Division of Medicaid Analysis, and the Division of Health Financing and Economic Analysis.

The specific changes to part F. are as follows:

- Section FD.10. Office of Legislation and Policy ("B" (Organization), is

deleted in its entirety and replaced with the following new section:

Section FD.10. Office of Legislation and Policy (FB) (Organization)

The Office of Legislation and Policy (OLP), under the leadership of the Director, OLP, includes:

- A. The Division of Hearings and Policy Presentation (FBD),
- B. The Division of Congressional Affairs (FBE),
- C. The Division of Medicare Part A Analysis (FBF),
- D. The Division of Medicare Part B Analysis (FBG),
- E. The Division of Medicaid Analysis (FBH), and
- F. The Division of Health Financing and Economic Analysis (FBJ).

• Sections FD.20.A., Office of Policy Analysis (FBA), is deleted in its entirety and replaced by the following new Section FD.20.A., Division of Hearings and Policy Presentation (FBD):

A. Division of Hearings and Policy Presentation (FBD)

1. In preparation for Congressional hearings, drafts testimony to be used by the Administrator, the Secretary and other HHS policy officials.

2. Serves as the principle HCFA contact point with the Office of the Assistant Secretary for Legislation (ASL) on Congressional hearings and coordinates the preparation for such hearings, working with other Office of Legislation and Policy and HCFA components.

3. Clears other Departmental and Administration testimony that has a bearing on Medicare, Medicaid or other health care financing programs.

4. Reviews other written products such as bill reports, studies, policy statements, etc., for clarity, presentation and consistency with overall HCFA policy.

5. Develops policy presentations for the general media in consultation with the Office of the Associate Administrator for Communications.

• Section FD.20.B., Office of Legislation and Congressional Affairs (FBB), is deleted in its entirety and replaced by the following new Section FD.20.B., Division of Congressional Affairs (FBE):

B. Division of Congressional Affairs (FBE)

1. Serves as the HCFA focal point for all Congressional liaison activities. Coordinate HCFA's Congressional liaison activities with the Office of the Assistant Secretary for Legislation (ASL).

2. Responds to Congressional inquiries and constituent concerns related to Medicare, Medicaid and other health care financing issues. Organizes briefings for Congressmen, Congressional staff and the public on specific issues and prepares reports on these issues for higher level management.

3. Notifies Congress of specific NCFA activities of interest to Members.

4. Provides advice to the Director, Office of Legislation and Policy, the Administrator and other HHS policy officials on the resolution of sensitive Congressional issues.

5. Prepares legislative histories and Congressional profiles used by HCFA senior staff in preparation for Congressional hearings.

6. Prepares a variety of summary reports on Congressional legislative activities and inquiries for use by the Director, OLP, the Administrator and other HHS policy officials.

7. Maintains the HCFA legislative reference library. Provides legislative reference and research services to HCFA, the Department and the general public.

• A new Section FD.20.C., Division of Medicare Part A Analysis (FBF), is added to read as follows:

E. Division of Medicare Part A Analysis (FBF)

1. Conducts legislative, economic, and policy analyses related to Medicare Part A issues. Substantive areas include Medicare Part A benefits, eligibility, payment, and financing, and other cross-cutting parts of Medicare and the health delivery system that have an effect on Medicare Part A.

2. Coordinates the development of Medicare Part A legislative proposals and develops the technical specifications for such legislation. Plans, develops and directs the strategy to enhance the enactment of the Administration's Medicare Part A legislative program.

3. Analyzes and reviews Medicare Part A regulations, issue papers, Office of the Inspector General reports, reports to Congress, and other policy documents for the Director, OLP.

4. Designs and conducts long-range Medicare Part A policy studies as well as other special projects, such as representing HCFA or OLP on task forces, outside commissions or policy panels in assigned areas.

5. Working with the Office of the Assistant Secretary for Legislation (ASL), provides (or coordinates) technical consultative services to Congressional members, their staff and

the public on Medicare Part A legislation and related HCFA activities.

6. Recommends the HCFA and HHS position on Medicare Part A legislation likely to be considered by Congress. Develops bill reports and coordinates comments from other HCFA and HHS components. Clears enrolled bill reports and recommends Presidential veto or signature. Prepares legislative summaries of newly enacted legislation and selected Congressional bills.

7. Monitors all Medicare Part A Congressional legislative activity, with an emphasis on Budget Reconciliation and other major legislation.

8. Assists in the preparation of Medicare Part A briefing materials, background, and testimony for HCFA and HHS policy officials' appearances at Congressional hearings.

9. Provides assistance to other offices within OLP to ensure consistent, coordinated analyses and responses. Provides input to cross-cutting projects.

• A new Section FD.20.D., Division of Medicare Part B Analysis (FBG), is added to read as follows:

F. Division of Medicare Part B Analysis (FBG)

1. Conducts legislative, economic, and policy analyses related to Medicare Part B issues. Substantive areas include Medicare Part B benefits, eligibility, payment, and financing, and other cross-cutting parts of Medicare and the health delivery system that have an effect on Medicare Part B.

2. Coordinates the development of Medicare Part B legislative proposals and develops the technical specifications for such legislation. Plans, develops and directs the strategy to enhance the enactment of the Administration's Medicare Part B legislative program.

3. Analyzes and reviews Medicare Part B regulations, issue papers, Office of the Inspector General reports, reports to Congress, and other policy documents for the Director, OLP.

4. Designs and conducts long-range Medicare Part B policy studies as well as other special projects, such as representing HCFA or OLP on task forces, outside commissions or policy panels in assigned areas.

5. Working with the Office of the Assistant Secretary for Legislation (ASL), provides (or coordinates) technical consultative services to Congressional members, their staff and the public on Medicare Part B legislation and related HCFA activities.

6. Recommends the HCFA and HHS position on Medicare Part B legislation likely to be considered by Congress.

Develops bill reports and coordinates comments from other HCFA and HHS components. Clears enrolled bill reports and recommends Presidential veto or signature. Prepares legislative summaries of newly enacted legislation and selected Congressional bills.

7. Monitors all Medicare Part B Congressional legislative activity, with an emphasis on Budget Reconciliation and other major legislation.

8. Assists in the preparation of Medicare Part B briefing materials, background, and testimony for HCFA and HHS policy officials' appearances at Congressional hearings.

9. Provides assistance to other offices within OLP to ensure consistent, coordinated analyses and responses. Provides input to cross-cutting projects.

• A new Section FD.20.E., Division of Medicaid Analysis (FBH), is added to read as follows:

E. Division of Medicaid Analysis (FBH)

1. Conducts legislative, economic, and policy analysis related to the Medicaid Program. Substantive areas include Medicaid eligibility, payment, coverage, financing, the impact on Medicaid of changes to Public Health Service and welfare programs, and the health care of low income individuals.

2. Coordinates the development of Medicaid legislative proposals and develops the technical specifications for such legislation. Plans, develops and directs legislative strategy to enhance the enactment of the Administration's legislative program for the Medicaid program.

3. Analyzes and reviews Medicaid regulations, issue papers, Office of the Inspector General reports, reports to Congress, and other policy documents for the Director, Office of Legislation and Policy.

4. Designs and conducts long-range Medicaid policy studies as well as special projects, such as representing HCFA or OLP on task forces, outside commissions or policy panels in assigned areas.

5. Working with the Office of the Assistant Secretary for Legislation (ASL), provides (or coordinates) technical consultative services to Congressional members, their staff and the public on Medicaid legislation and related HCFA activities.

6. Recommends the HCFA and HHS position on Medicaid legislation likely to be considered by Congress. Develops bill reports and coordinates comments from other HCFA and HHS components. Clears enrolled bill reports and recommends Presidential veto or signature. Prepares legislative

summaries of newly elected legislation and selected Congressional bills.

7. Monitors all Medicaid Congressional legislative activities, with an emphasis on Budget Reconciliation and other major legislation.

8. Prepares Medicaid briefing materials, background, and testimony for HCFA and HHS policy officials' appearances at Congressional hearings.

9. Provides assistance to other offices within OLP to ensure consistent, coordinated analyses and responses. Provides input to cross-cutting projects.

• A new Section FD.20.F., Division of Health Financing and Economic Analysis (FBJ), is added to read as follows:

F. Division of Health Financing and Economic Analysis (FBJ)

1. Conducts legislative, economic and policy analysis studies related to the private health insurance industry (including that for long-term care insurance) and the overall structure of health care financing.

2. Designs and develops long-range policy studies of health care financing issues other than the Medicare or Medicaid programs. These issues include, for example, the private health insurance market, malpractice insurance, the effect of the tax code on health care financing, and other issues. Conducts special projects, such as representing HCFA or the Office of Legislation and Policy (OLP) on task forces or policy panels in assigned areas.

3. Analyzes and reviews current economic and financial management literature to ascertain the state of the nation's health policy economics to develop national trend analyses for future HCFA program directions.

4. Plans and develops future HCFA program legislative strategies that will enhance the Administration's legislative program. Coordinates the development of legislative proposals designed to reform the overall U.S. health care system and develops the technical specifications for such legislation.

5. Provides assistance to other OLP components to ensure consistent, coordinated analyses and responses. Manages and directs cross-cutting projects.

6. Analyzes and reviews regulations, issue papers, Office of Inspector General reports, reports to Congress, and other policy documents that have an effect on the overall health financing system.

7. Monitors all Congressional legislative activity with an emphasis on proposals designed to reform the overall U.S. health care financing system.

8. Recommends the HCFA and HHS position on legislation likely to be considered by Congress. Develops bill reports and coordinates comments from other HCFA and HHS components.

Dated: August 17, 1990.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

[FR Doc. 90-20801 Filed 9-4-90; 8:45 am]

BILLING CODE 4120-03-M

Health Resources and Services Administration

Final Funding Criteria for Fellows, Policy on Payment of Stipends, Funding Preferences, and Review Criteria for Nurse Anesthetists Faculty Fellowship Grants

The Health Resources and Services Administration (HRSA) announces the final funding criteria for fellows, policy on payment of stipends, funding preferences, and review criteria for Nurse Anesthetist Faculty Fellowship Grants for fiscal year 1990 authorized under section 831(b) of the Public Health Service Act.

Purpose

Section 831(b) of the Public Health Service Act includes authority for grants for the purpose of providing financial assistance and support (fellowships) to certified registered nurse anesthetists (CRNAs) who are faculty members of accredited programs to enable such nurse anesthetists to obtain advanced education relevant to their teaching functions.

Proposed criteria for fellows, policy on payment of stipends, funding preferences and review criteria were published in the *Federal Register* of June 20, 1990 (55 FR 25177) for public comment. Eight comments were received (six during the 30-day comment period and two after the comment period ended).

All commentators agreed that the language used (*i.e.*, "employed by") in the sections: Applicants and the Proposed Criteria for Fellows, is too restrictive. They recommended that the wording be changed to state "employed by", as well as, "affiliated with" the applicant institution since many CRNAs are involved in the clinical education of students while holding non-paid faculty positions. The Department has agreed to revise the language in the sections: Applicants and the Proposed Criteria for Fellows, since many of the CRNA faculty are salaried by institutions other than the nurse anesthetist schools.

One commenter suggested that in the funding preferences, the third and fourth preferences be combined into a single preference which would read, "third, to faculty who are full-time or part-time students." The Department believes that the language for preference order as published should remain since funding full-time students before part-time students will help to ensure that a greater number of nurses will complete their training in the shortest time possible during a period of limited resources. Therefore, this preference has not been revised and will be retained as proposed.

Applicants

The section on "Applicants" is revised to read as follows: Public or private nonprofit institutions for the education of nurse anesthetists, which are accredited by an entity or entities designated by the Secretary of Education, may apply for grants to cover the cost of tuition and fees and certain stipends for currently employed or affiliated CRNA faculty who qualify for a fellowship.

The criteria for fellows, policy on payment of stipends, funding preferences and review criteria are stated as follows:

Final Criteria for Fellows

1. Be a CRNA employed by or affiliated with the applicant institution as a faculty member during the period of the awarded fellowship.
2. Be enrolled or accepted for enrollment in a master's degree program or in a doctoral degree program to obtain advanced education relevant to the faculty member's teaching functions.

Final Policy on Payment of Stipends

A faculty member may be paid a stipend for living costs if attending an educational institution as a full-time student; no stipend would be available for a faculty member who is enrolled in part-time study or who is employed on a full-time basis.

Final Funding Preferences

Funding preference will be given first to minority faculty, second to faculty who will complete degree requirements before or by the end of the funded budget year, third to faculty who are full-time students, and fourth to faculty who are part-time students.

Final Review Criteria

Applications will be reviewed by staff of the Division of Nursing and of the Grants Management Office of the Bureau of Health Professions, taking into consideration:

1. The eligibility of applicants;
2. The eligibility of faculty; and
3. The extent to which an applicant meets the funding preferences.

For information regarding this program contact Dr. Mary Hill, Chief, Nursing Education Practice Resources Branch, Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 5C-14, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443-6193.

The Catalog of Federal Domestic Assistance number is 13.907. This program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: August 28, 1990.

Robert G. Harmon,
Administrator.

[FR Doc. 90-20748 Filed 9-4-90; 8:45 am]

BILLING CODE 4150-15-M

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of September 1990:

Name: Commission on the National Nursing Shortage.

Date and Time: September 24-25, 1990, 8:30 a.m.

Place: Conference Room G, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

The meeting is open to the public.

Purpose: The Commission advises the Secretary, the Assistant Secretary for Health, and the Administrator, Health Resources and Services Administration on specific projects implementing the recommendations of the Secretary's Commission on Nursing. These projects should attempt optimal utilization of available resources and expertise from Federal, State, and local government and private sector organizations.

The recommended projects will target the following five focus areas: (1) Recruitment and the education pathway; (2) retention and career development; (3) restructuring nursing services and effective utilization of nursing personnel; (4) data collection and analysis requirements; and (5) information systems and related technology in nursing.

In each focus area, the Commission shall formulate one targeted initiative designed to improve the imbalance in the nursing labor market and provide a

model for broader endeavors. In addition, the Commission shall investigate ways to promote and identify specific commitments from private sector organizations and State and local government for fulfilling the projects.

Agenda: The meeting will include welcome and opening remarks by the Director, Bureau of Health Professions; Presentations of activities to date will be made by each of the following work groups: Recruitment and Education Pathway and Retention and Career Mobility; Restructuring Nursing Services and Effective Utilization of Nursing Personnel and Information Systems; and Data Collection and Analysis Requirements.

Presentations will be made by several invited speakers addressing the above work group activities. Commission discussions will focus on the establishment of priorities for projects and mechanisms for funding and dissemination. The agenda for future work group and full Commission meetings will be discussed.

There will be brief segments for public comment, once each day.

Persons interested in providing brief public comments should contact Dr. Caroline B. Burnett, Senior Consultant, Commission on the National Nursing Shortage, Health Resources and Services Administration, room 14A-40, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-0579, for more specific information.

Anyone requiring information regarding the subject Council should contact Dr. Caroline B. Burnett, Senior Consultant, Commission on the National Nursing Shortage, Health Resources and Services Administration, room 14A-40, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-0579.

Agenda items are subject to change as priorities dictate.

Dated: August 29, 1990.

Jackie E. Baum,

Advisory Committee Management Officer,
HRSA.

[FR Doc. 90-20749 Filed 9-4-90; 8:45 am]

BILLING CODE 4150-15-M

National Institutes of Health

National Commission on Sleep Disorders Research; Meeting

Notice is hereby given of a Public Meeting to be held by the "National Commission on Sleep Disorders Research". This meeting, sponsored by the National Institute on Aging will be

held on September 25, from 9:30 a.m. to 12 p.m. at the U.S. Capitol complex. The specific room for the hearing will be announced at a future date. Public testimony will be welcomed from community members, physicians and patients who have an interest in sleep disorders. Interested persons should contact Dr. William Dement, Chairman of the Commission, at the Sleep Research Center, 701 Welch Road, Suite 2226, Palo Alto, California 94304, (415) 723-0299. Further information can be obtained from Dr. Andrew Monjan, Executive Secretary of the Commission, at the National Institute on Aging, 9000 Rockville Pike, Building 31C, room 5C35, Bethesda, Maryland 20892, (301) 496-9350.

Dated: August 28, 1990.

J. Edward Rall,

Acting Director, National Institutes of Health.

[FR Doc. 90-20773 Filed 9-4-90; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Proposed Implementing Procedures

AGENCY: Department of the Interior.

ACTION: Notice of proposed additions to the Department of the Interior's Categorical Exclusions for the Office of Surface Mining Reclamation and Enforcement.

SUMMARY: This notice announces a proposed addition to the categorical exclusions included in the Department Manual 516 DM 6, appendix 8, that lists actions excluded from the National Environmental Policy Act of 1969 (NEPA) procedures for the Office of Surface Mining Reclamation and Enforcement (OSM). The proposed categorical exclusion pertains to a limited type of projects carried out in the abandoned mine lands program under title IV of the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

DATES: Comments due November 6, 1990.

ADDRESSES: Comments to Jonathan P. Deason, Director, Office of Environmental Affairs, MS 2340-MIB, Department of the Interior, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Dr. Jonathan P. Deason, address above, telephone (202) 208-3891; for OSM, Catherine Roy, (202) 343-5143.

SUPPLEMENTARY INFORMATION: The proposed categorical exclusion would be added to the list of categorical exclusions in the Department of the

Interior's Manual (516 DM 6, appendix 8). It would exclude from further review for compliance with NEPA certain projects conducted under title IV of SMCRA. Title IV sets out provisions for the reclamation of abandoned mines and authorizes the Secretary to provide grants to States for this purpose.

NEPA requires that when a major Federal action may have significant impacts on the quality of the human environment, a detailed statement (EIS) be prepared (section 102(2)(C)). When it is known in advance that a certain category of actions will not have a significant effect on the human environment, that category of actions may be excluded from the further NEPA requirements (40 CFR 1508.1). The Department has previously reviewed the activities authorized under title IV and excluded certain decisions relative to the approval of grants under the abandoned mine land (AML) program.

The Department has now reviewed additional activities relating to the reclamation of abandoned mine lands and proposes an additional categorical exclusion as subparagraph 8.4.B(33) in appendix 8. The excluded activities would be limited in size and scope, as described below. The proposed exclusion is a category of action that does not individually or cumulatively have a significant effect on the quality of the human environment. If any of the exceptions to categorical exclusions listed in appendix 2 to 516 DM 2 apply to individual actions within the proposed exclusion, however, an environmental document must be prepared.

Appendix 8 must be interpreted in conjunction with the Department's NEPA procedures (516 DM 1-6) and the Council on Environmental Quality regulations implementing the procedural provisions of NEPA (40 CFR parts 1500-1508). The Department's procedures were published in the Federal Register on April 29, 1980 (45 FR 27541) and revised on May 21, 1984 (49 FR 21437). Appendix 8 for OSM was published on January 23, 1981 (46 FR 7487) and revised on February 28, 1990 (55 FR 7038).

Introduction to proposal: The Secretary may award grants to States or Indian Tribes for activities to reclaim and restore land and water resources damaged by coal mining that occurred prior to August 3, 1977, including abandoned surface coal mines, abandoned coal processing areas, sealing and filling abandoned deep coal mine entries and voids, planting of land adversely affected by past coal mining to prevent erosion and sedimentation, and control of water pollution created by coal mine drainage (section 401(c)(1)

of SMCRA). These reclamation projects may also be carried on where the damage was a result of non-coal mining if certain conditions are met (section 409(c) of SMCRA). These projects generally involve eight types of hazards: mine openings (portals) and vertical shafts, subsidence, highwalls, mine fries, unstable materials (slides), mine drainage, hazardous equipment and structures, and impoundments. They vary considerably in size, from those affecting only a few square feet to those affecting hundreds of acres, and vary in costs from a few thousand dollars to several million. These abandoned mine land hazards can be found in any State where coal mining activities occurred prior to August 3, 1977.

Proposed Categorical Exclusion 33: AML reclamation projects of limited size and scope: no more than \$10,000 in costs, no more than an acre, and no more than two days to complete; non-adjacent and non-related; having no off-site impacts; involving no wetlands, cultural or historic lands, or threatened or endangered species or their habitats; having no radon, polychlorinated biphenyls (PCBs), asbestos, medical waste, or other hazardous materials (including hazardous waste and hazardous substances) or toxic substances; and using no explosives. All sites considered in this categorical exclusion would have to first meet the eligibility test in sections 404 and 409 of SMCRA. Also, projects that have been declared an emergency pursuant to section 410 of SMCRA, regardless of size or other characteristics, would not be candidates for this exclusion.

Eligibility for this categorical exclusion would be determined by OSM based on the results of on-site inspection(s), survey(s), and other methods of evaluation and documentation to determine the presence or absence of the criteria. OSM would prepare a categorical exclusion determination to document the findings that the site meets all of these qualifications. Details of this determination would be added to the chapter on environmental compliance in the Federal Assistance Manual, which applies to projects funded by grants under title IV. Projects that do not fully meet all of these criteria would not qualify for this categorical exclusion.

Discussion of Criteria

Costs no more than \$10,000, no more than an acre, and no more than two days work: Projects in this proposed categorical exclusion would be limited to a maximum of \$10,000 in reclamation costs and two days of work. Qualified

projects would also be limited to a maximum of one acre. This may appear to be a redundant criterion, as projects with such a low cost and short completion schedule would not cover a large area, anyway; the Department wishes, however, to clarify the physical size of qualified projects, as it relates to other criteria described below.

The Department feels that there is a relationship between the problems that would be encountered during reclamation of a site and the cost of the reclamation project. Low project cost and a short time period are indications that the reclamation effort would be uncomplicated and that impacts would not be significant. If a project's complexity would require reclamation costs in excess of \$10,000 or more than two days to complete, or would involve more than an acre of land, there is less certainty that the project would not result in significant impacts alone or cumulatively, and an environmental assessment would be prepared in order to make that determination. This initial test of cost and time would identify such projects.

Restricting the size of projects by cost, time, and acreage also limits the type of equipment that would be used. Machinery and other equipment used in these little projects would not be expected to cause extensive or significant impacts. It is not likely that companies involved with reclamation of these sites would be able to use heavy equipment when the cost of the project is limited to \$10,000 and a maximum of one acre.

Non-adjacent and non-related: Projects that are related or adjacent may have no significant impacts if undertaken alone, but when taken together with others, the cumulative impacts may be significant. A large project may not be divided into several small ones just to avoid the requirement for compliance with NEPA procedures. This criterion would minimize the possibility for that action.

Off-site impacts: Projects that are restricted to one acre or less are unlikely to have significant off-site impacts, other than at the source of the fill material (e.g., quarry). Even small projects, however, may have impacts elsewhere, such as in hydrology. Further, certain projects such as those dealing with subsidence control, might have off-site impacts. Projects that would create or exacerbate a problem elsewhere would not qualify for this exclusion.

Wetlands, cultural, or historic lands, or threatened and endangered species or their habitats: The presence of certain sensitive areas—wetlands, cultural or historic lands, or threatened/

endangered species or their habitats—would make a site ineligible for this proposed categorical exclusion. These areas are protected by other Federal laws or Executive Orders. It has already been determined that significant impacts may result from actions involving these sites. The Department, therefore, cannot and will not categorically exclude them from further NEPA compliance. In addition, States may have their own lists of sites to be afforded special protection. Projects with such sites of special interest to the State in which the project is located would not be eligible for this exclusion.

Radon, polychlorinated biphenyls (PCBs), asbestos, medical waste, or other hazardous materials (including hazardous waste and hazardous substances) or toxic substances: The potential for significant impacts may be present at sites with materials that may be a danger to the work crew conducting the reclamation or to residents or other citizens. The use of protective clothing, ventilators, or face masks or other special handling techniques are often required for protection from these materials. For example, PCBs, frequently found at old mine sites in old electrical transformers, require not only special handling at the site but also special disposal procedures. Further NEPA analysis would be needed to make a determination of the potential for significant impacts for those sites. Projects where these materials or substances may be present would not be eligible for this exclusion.

No explosives: SMCRA and the OSM regulations place special restrictions on the use of blasting materials in part because it is recognized that they involve a potential for injury to the work crew and/or the general public in the area and damage to property. For this reason, reclamation projects that require the use of explosives would not qualify for this categorical exclusion.

To be considered, any comments on this proposed addition to the list of categorical exclusions in the Department Manual must be received by November 6, 1990 at the location in ADDRESS above. Comments received after that date will be considered only to the extent practicable.

Outline: Chapter 6 [516 DM 6] Managing the NEPA Process, Appendix 8—Office of Surface Mining Reclamation and Enforcement, 8.4 Categorical Exclusions

Dated: August 27, 1990.

Jonathan P. Deason, Director,
Office of Environmental Affairs.

516 DM 6, Appendix 8

Office of Surface Mining Reclamation and Enforcement

8.4 Categorical Exclusions

B. * * *

(33) AML reclamation projects of limited size and scope: no more than \$10,000 in costs, no more than an acre, and no more than two days to complete; non-adjacent and non-related; having no off-site impacts; involving no wetlands, cultural or historic lands, or threatened or endangered species or their habitats; having no radon, polychlorinated biphenyls (PCBs), asbestos, medical waste, or other hazardous materials (including hazardous waste and hazardous substances) or toxic substances; and using no explosives.

[FR Doc. 90-20755 Filed 9-4-90; 8:45 am]

BILLING CODE 4310-10-M

Bureau of Land Management

[AZ-930-00-4214-11; AR09240]

Proposed Modification and Continuation of Withdrawal; Arizona

August 22, 1990.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes to modify and continue for 20 years a portion of public land order (PLO) 1545 as amended by PLOs 3272, 3878, 4754, 4797 and 5138. This PLO withdrew land in the Coconino, Tonto and Sitgreaves National Forests for administrative and recreational purposes. This notice pertains only to the land located within the Tonto National Forest. Other notices will be published for the lands located within the Coconino and Sitgreaves National Forests.

The specific areas withdrawn on the Tonto National Forest are the Sunflower Picnic Ground (Addition), the Sunflower Administrative Site and the Sycamore Creek Public Use Area. The lands continue to be utilized for the purposes withdrawn with the exception of 240.20 acres of the Sunflower Administrative Site located in T. 6 N., R. 8 E., section 1. The withdrawal is proposed for termination in section 1. It is anticipated that there will be no major changes in land use in the near future. The proposed actions are consistent with the existing Tonto National Forest Land Management Plan. It is recommended the land on which the withdrawal is to

be continued be segregated from operations under the mining laws only.

DATES: Comments to this notice should be received on or before December 4, 1990.

ADDRESSES: Comments should be addressed to the Arizona State Director, BLM, P.O. Box 16563, Phoenix, Arizona 85011.

FOR FURTHER INFORMATION CONTACT: John Mezes, BLM, Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011, (602) 640-5509.

SUPPLEMENTARY INFORMATION: The Forest Service proposes that PLO 1545, dated November 6, 1957, as amended, be continued for a period of 20 years as it pertains to 453.30 acres and terminated on 240.20 acres of national forest land. The land has been and will continue to be closed to operations under the mining laws only. Actions are taken pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, insofar as it affects the following described lands in the State of Arizona:

GILA AND SALT RIVER MERIDIAN

Continue

T. 6 N., R. 9 E.,
Sec. 6, Lots 8, 9, 10, 11, 395.80 acres.
12 and 13, S $\frac{1}{2}$ NE $\frac{1}{4}$,
SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$,
Sec. 17, SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, 37.50 acres.
N $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$,
N $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$,
SE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$,
E $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$,
SE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$,
T. 4 N., R. 8 E.,
Sec. 18, SE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$, 20.00 acres.
NE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$,
Terminate
T. 6 N., R. 8 E.,
Sec. 1, Lots 1 and 2, 240.20 acres.
S $\frac{1}{2}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$.

The areas described contain 453.30 acres on which the withdrawal will be continued and 240.20 acres on which it will be terminated. All land is located in Maricopa County.

The purpose of the withdrawal is for the administration and protection of an administrative site, a picnic ground and a public-use area. This proposal is to continue the segregation from mining only and impose a 20-year life on the withdrawal. The 240.20 acres of the withdrawal to be terminated has not been used for administrative site purposes in the past and is considered no longer necessary for the continued use of the administrative site.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in

connection with this proposed action may present their views in writing to this office.

The authorized officer of the Bureau of Land Management will undertake such investigation as is necessary to determine the existing and potential demand for the land and its resources. A report will be prepared for consideration by the Secretary of the Interior, the President, and the Congress, who will determine whether or not the withdrawal will be modified and continued and, if so, for how long. Notice of the determination will be published in the Federal Register. The existing withdrawal will continue until such final determination is made.

Phillip D. Moreland,

Acting Deputy State Director, Division of Lands and Renewable Resources.

[FR Doc. 90-20812 Filed 9-4-90; 8:45 am]

BILLING CODE 4310-32-M

[AZ-930-00-4214-11; A-5968]

Proposed Modification and Continuation of Withdrawal; Arizona

August 23, 1990.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes to modify and continue for 20 years a portion of public land order (PLO) 5279. This PLO withdrew two parcels of land in the Tonto National Forest for an administrative site and a wildlife enclosure. The Forest Service proposes to modify and continue the withdrawal for the Payson Administrative Site and to terminate the withdrawal for the Cline Cabin Wildlife Enclosure.

DATES: Comments to this notice should be received on or before December 4, 1990.

ADDRESSES: Comments should be addressed to the Arizona State Director, BLM, P.O. Box 16563, Phoenix, Arizona 85011.

FOR FURTHER INFORMATION CONTACT: John Mezes, BLM, Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011, (602) 640-5509.

SUPPLEMENTARY INFORMATION: The Forest Service proposes that PLO 5279 dated October 11, 1972, be continued for a period of 20 years as it pertains to a 358.90 acre parcel (Payson Administration Site) and terminated on a 40.00 acre parcel (Cline Cabin Wildlife Enclosure) of National Forest System (NFS) land. The land has been and will continue to be closed to operations

under the mining laws only. Actions are taken pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, insofar as it affects the following described lands in the State of Arizona:

GILA AND SALT RIVER MERIDIAN

Continue

T. 10 N., R. 10 E.,
Sec. 2, Lots 2, 3, and 4, 358.90 acres.
SW $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$,
N $\frac{1}{2}$ SW $\frac{1}{4}$, and NW $\frac{1}{4}$ SE $\frac{1}{4}$.
Terminate
T. 4 N., R. 9 E., (unsurveyed)
Sec. 3, NE $\frac{1}{4}$ NE $\frac{1}{4}$, 40.00 acres.

The areas described contain 358.90 acres on which the withdrawal will be continued and 40.00 acres on which it will be terminated. The land is located in Maricopa and Gila Counties respectively.

The purpose of the withdrawal is for the continued protection of the Payson Administrative Site. This site is entirely within the town limits of Payson and is surrounded by private lands. The site has been and continues to be utilized for the purpose it was withdrawn. Located on the site is an office building, five mobile homes, a six-bay shop/warehouse, metal storage sheds and appurtenant improvements. This proposal is to continue the segregation from mining only and impose a 20-year life on the withdrawal. The withdrawal for the Cline Cabin Wildlife Enclosure will be terminated as it has not been used for the stated purpose, that of a wildlife enclosure, and there is no intention to do so. The land will be opened to such forms of disposition as the law will allow on NFS land.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed action may present their views in writing to this office. The authorized officer of the Bureau of Land Management will undertake such investigation as is necessary to determine the existing and potential demand for the land and its resources. A report will be prepared for consideration by the Secretary of the Interior, the President, and the Congress, who will determine whether or not the withdrawal will be continued as modified and, if so, for how long. Notice of the determination will be published in the Federal Register. The existing

withdrawal will continue until such final determination is made.

John H. Stephenson,

Acting Deputy State Director, Division of
Lands and Renewable Resources.

[FR Doc. 90-20813 Filed 9-4-90; 8:45 am]

BILLING CODE 4310-32-M

[AZ-930-00-4214-10, A-7951]

Withdrawal of Application, Termination of Segregation; Arizona

August 23, 1990.

AGENCY: Bureau of Land Management,
Interior.

ACTION: Notice.

SUMMARY: By memorandum dated February 26, 1990, the U.S. Fish and Wildlife Service withdrew pending application A-7951. Application A-7951 (Tinajas Altas addition) was filed on February 21, 1974, for 79,000 +/- acres of public land in Townships 12 and 13 South, Ranges 17 and 18 West, Gila and Salt River Meridian, as a proposal addition to the Cabeza Prieta Game Range. All lands are located within the present boundaries of the Barry M. Goldwater Air Force Range and continue to be encumbered by that withdrawal. The intent of A-7951 was to protect the area for wildlife purposes.

Public Land Order 5493, issued March 21, 1975, amended Executive Order No. 8039 by changing the status of the Game Range to that of a National Wildlife Refuge and transferring jurisdiction to the U.S. Fish and Wildlife Service. Public Law 99-606, passed on November 6, 1986, withdrew the Barry M. Goldwater Air Force Range for military purposes. It withdrew the area from all forms of appropriation including the mining and mineral leasing laws. These actions accomplished the intent of application A-7951 and the need for A-7951 no longer exists. The file is closed on the record as of the date of publication in the Federal Register.

FOR FURTHER INFORMATION CONTACT:
John Mezes, BLM, Arizona State Office,
P.O. Box 16563, Phoenix, Arizona 85011,
(602) 640-5509.

John H. Stephenson,

Acting Deputy State Director, Division of
Lands and Renewable Resources.

[FR Doc. 90-20815 Filed 9-4-90; 8:45 am]

BILLING CODE 4310-32-M

[UT-942-00-4214-10; U-65685]

Proposed Withdrawal; Utah

AGENCY: Bureau of Land Management,
Interior.

ACTION: Correction notice.

SUMMARY: The purpose of this notice is to correct errors in a Federal Register Notice published on July 24, 1990.

FOR FURTHER INFORMATION CONTACT:
Mike Barnes, BLM Utah State Office,
P.O. Box 45155, Salt Lake City, Utah
84145-0155. (801) 539-4119.

CORRECTIONS: Federal Register Volume 55, No. 142, Page 30040, is corrected as follows:

Under "Summary", line 3, the acreage 33,323.60, should read 33,403.80. Line 7 states "up to 2 years from surface entry mining", it should read "up to 2 years from surface entry and mining location." Under "SUPPLEMENTARY INFORMATION", legal descriptions, T.2 N., R. 16 W., Salt Lake Meridian, section 30 reads as lots 1-4, S $\frac{1}{2}$ N $\frac{1}{2}$, S $\frac{1}{2}$. Section 30 should read lots 1-4, E $\frac{1}{2}$, E $\frac{1}{2}$ W $\frac{1}{2}$, Section 31 reads as lots 1-4, S $\frac{1}{2}$ N $\frac{1}{2}$, S $\frac{1}{2}$. Section 31 should read, lots 1-4, E $\frac{1}{2}$, E $\frac{1}{2}$ W $\frac{1}{2}$.

Ted D. Stephenson,

Chief, Branch of Sands and Minerals
Operations.

[FR Doc. 90-20810 Filed 9-4-90; 8:45 am]

BILLING CODE 4310-DQ-M

INTERNATIONAL TRADE COMMISSION

[Invs. Nos. 701-TA-304 and 731-TA-470-472 (Preliminary)]

Institution, Silicon Metal From Argentina, Brazil, and The People's Republic of China

AGENCY: International Trade
Commission.

ACTION: Institution of a preliminary countervailing duty and antidumping investigations, and scheduling of a conference to be held in connection with these investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary countervailing duty investigation No. 701-TA-304 (Preliminary) under section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Brazil of silicon metal.¹

¹ The products subject to these investigations are known to petitioners and in the U.S. market as silicon metal. They contain, by weight, from 96 to less than 99.99 percent of silicon (products containing 99.99 percent or more of silicon are known as semiconductor-grade silicon metal and are not subject to the investigations). For tariff

that are alleged to be subsidized by the Government of Brazil. As provided in section 703(a), the Commission must complete preliminary countervailing duty investigations in 45 days, or in this case by October 9, 1990.

The Commission hereby also gives notice of the institution of preliminary antidumping investigations Nos. 731-TA-470-472 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Argentina, Brazil, and the People's Republic of China of silicon metal,² that are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by October 9, 1990.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR part 207), and part 201, subparts A through E (19 CFR part 201).

EFFECTIVE DATE: August 24, 1990.

FOR FURTHER INFORMATION CONTACT:
Fred Rogoff (202-252-1179), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background. These investigations are being instituted in response to a petition filed on August 24, 1990 by the merchant-producer members of the U.S. silicon metal industry.³

purposes, however, the Harmonized Tariff Schedule of the United States (HTS) defines the subject products as the chemical element silicon, rather than silicon metal. They are provided for in HTS subheadings 2804.69.10 and 2804.69.50 (previously in items 632.42 and 632.66 of the former Tariff Schedules of the United States).

² See footnote number 1 on page 1 for product definitions and tariff schedules of items included in these investigations.

³ The merchant-producer members of the U.S. silicon metal industry include: American Alloys, Inc., Pittsburgh, PA; Elkem Metals Company, Pittsburgh, PA; Globe Metallurgical, Inc., Cleveland.

Continued

Participation in the investigations. Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the *Federal Register*. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Public service list. Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each public document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the public service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Limited disclosure of business proprietary information under a protective order and business proprietary information service list. Pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)), the Secretary will make available business proprietary information gathered in these preliminary investigations to authorized applicants under a protective order, provided that the application be made not later than seven (7) days after the publication of this notice in the *Federal Register*. A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that it has been served on all the parties that are authorized to receive such information under a protective order.

Conference. The Director of Operations of the Commission has scheduled a conference in connection with these investigations for 9:30 a.m. on Friday, September 14, 1990 at the U.S. International Trade Commission

Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Fred Rogoff (202-252-1179) not later than Tuesday, September 11, 1990 to arrange for their appearance. Parties in support of the imposition of countervailing duties and/or antidumping duties in these investigations, and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written submissions. Any person may submit to the Commission on or before Tuesday, September 18, 1990, a written brief containing information and arguments pertinent to the subject matter of the investigations, as provided in § 207.15 of the Commission's rules (19 CFR § 207.15). If briefs contain business proprietary information, a nonbusiness proprietary version is due Wednesday, September 19, 1990. A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7).

Parties which obtain disclosure of business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)) may comment on such information in their written brief, and may also file additional written comments on such information no later than Friday, September 21, 1990. Such additional comments must be limited to comments on business proprietary information received in or after the written briefs. A nonbusiness proprietary version of such additional comments is due Monday, September 24, 1990.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

Issued: August 30, 1990.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 90-20910 Filed 9-5-90; 8:45 am]

BILLING CODE 7020-01-M

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercompany Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercompany hauling operations as authorized in 49 U.S.C. 10524(b).

A. Parent corporation and address of principal office:

Browning-Ferris Industries, Inc., 757 N. Eldridge, Houston, Texas 77079—Delaware

B. Wholly-owned subsidiaries which will participate in the operations and states of incorporation:

1. A-C Trucking Company, Inc.—Wisconsin
2. Action Disposal System, Inc.—Minnesota
3. American Sheds, Inc.—California
4. Area Ninety Landfill, Inc./Ninety Plus, Inc.—Louisiana
5. Azusa Land Reclamation Co., Inc.—California
6. BFI of Ponce, Inc.—Puerto Rico
7. BFI Constructors—California
8. BFI Energy Systems, Inc./BFI Ref-Fuel, Inc.—Delaware
9. BFI Energy Systems, Inc. of Albany, Inc.—Delaware
10. BFI Energy Systems of Bergen County, Inc.—New Jersey
11. BFI Energy Systems of Boston, Inc.—Massachusetts
12. BFI Energy Systems of Brookhaven, Inc.—Delaware
13. BFI Energy Systems of East Bridgewater, Inc.—Delaware
14. BFI Energy Systems of Essex County, Inc.—New Jersey
15. BFI Energy Systems of Fresno, Inc.—California
16. BFI Energy Systems of Hempstead, Inc.—Delaware
17. BFI Energy Systems of Kent/Sussex, Inc.—Delaware
18. BFI Energy Systems of Lehigh Valley, Inc.—Delaware
19. BFI Energy Systems of Lowell, Inc.—Delaware
20. BFI Energy Systems of Midstate Connecticut, Inc.—Delaware
21. BFI Energy Systems of Oyster Bay, Inc.—Delaware
22. BFI Energy Systems of Plymouth, Inc.—Delaware

23. BFI Energy Systems of Southeastern Connecticut, Inc.—Delaware
24. BFI Energy Systems of Texas, Inc.—Delaware
25. BFI Fountain Landfill, Inc.—Colorado
26. BFI Medical Waste Systems, Inc.—Delaware
27. BFI Medical Waste Systems of Arizona, Inc.—Delaware
28. BFI Medical Waste Systems of California, Inc.—Georgia
29. BFI Medical Waste Systems of Colorado, Inc.—Delaware
30. BFI Medical Waste Systems of Illinois, Inc.—Delaware
31. BFI Medical Waste Systems of Iowa, Inc.—Iowa
32. BFI Medical Waste Systems of Minnesota, Inc.—Minnesota
33. BFI Medical Waste Systems of New Jersey, Inc.—New Jersey
34. BFI Medical Waste Systems of Utah, Inc.—Delaware
35. BFI Medical Waste Systems of (Atlantic), Inc.—Delaware
36. BFI Medical Waste Systems of (Northeast), Inc.—Delaware
37. BFI Medical Waste Systems of (Steel), Inc.—Delaware
38. BFI Medical Waste Systems of (South Central), Inc.—Tennessee
39. BFI Medical Waste Systems of (Southeast), Inc.—Delaware
40. BFI Modern Landfill, Inc.—Illinois
41. BFI of Chester County, Inc.—Pennsylvania
42. BFI Pharmaceutical Services, Inc.—Delaware
43. BFI Portable Services, Inc.—Delaware
44. BFI Recycling Systems of Minnesota, Inc.—Minnesota
45. BFI Recycling of New Jersey, Inc.—New Jersey
46. BFI of North Metro, Inc.—Michigan
47. BFI Services Group, Inc.—California
48. BFI Stephens, Inc.—Texas
49. BFI Waste Systems, Inc.—Texas
50. BFI Waste Systems of Indiana, Inc.—Indiana
51. Bio-Medical Services Corp.—Georgia
52. Bio-Tech Services, Inc.—Missouri
53. Brooks Disposal Service, Inc.—Illinois
54. Browning-Ferris, Inc.—Delaware
55. Browning-Ferris, Inc.—Maryland
56. Browning-Ferris Industries Waste Control, Inc.—Delaware
57. Browning-Ferris Industries Waste Systems, Inc.—New Jersey
58. Browning-Ferris Industries, Inc.—Massachusetts
59. Browning-Ferris Industries of Alabama, Inc.—Alabama
60. Browning-Ferris Industries of Arkansas, Inc.—Arkansas
61. Browning-Ferris Industries of Arizona, Inc.—Delaware
62. Browning-Ferris Industries of California, Inc.—California
63. Browning-Ferris Industries of Central Jersey, Inc.—Delaware
64. Browning-Ferris Industries of Colorado, Inc.—Colorado
65. Browning-Ferris Industries of Connecticut, Inc.—Delaware
66. Browning-Ferris Industries of Eastern Pennsylvania, Inc.—Pennsylvania
67. Browning-Ferris Industries of Elizabeth, N.J., Inc.—New Jersey
68. Browning-Ferris Industries of Florida, Inc.—Delaware
69. Browning-Ferris Industries of Georgia, Inc.—Georgia
70. Browning-Ferris Industries of Hawaii, Inc.—Delaware
71. Browning-Ferris Industries of Idaho, Inc.—Idaho
72. Browning-Ferris Industries of Illinois, Inc.—Delaware
73. Browning-Ferris Industries of Indiana, Inc.—Indiana
74. Browning-Ferris Industries of Iowa, Inc.—Iowa
75. Browning-Ferris Industries of Kansas, Inc.—Kansas
76. Browning-Ferris Industries of Kansas City, Inc.—Missouri
77. Browning-Ferris Industries of Kentucky, Inc.—Delaware
78. Browning-Ferris Industries of Long Island, Inc.—New York
79. Browning-Ferris Industries of Louisiana, Inc.—Louisiana
80. Browning-Ferris Industries of Maine, Inc.—Delaware
81. Browning-Ferris Industries of Michigan, Inc.—Michigan
82. Browning-Ferris Industries of Minnesota, Inc.—Minnesota
83. Browning-Ferris Industries of Mississippi, Inc.—Mississippi
84. Browning-Ferris Industries of Montana, Inc.—Nevada
85. Browning-Ferris Industries of Nebraska, Inc.—Nebraska
86. Browning-Ferris Industries of New Hampshire, Inc.—New Hampshire
87. Browning-Ferris Industries of New Jersey, Inc.—New Jersey
88. Browning-Ferris Industries of New York, Inc.—New York
89. Browning-Ferris Industries of North Jersey, Inc.—New Jersey
90. Browning-Ferris Industries of Ohio, Inc.—Delaware
91. Browning-Ferris Industries of Ohio and Michigan, Inc.—Ohio
92. Browning-Ferris Industries of Oregon, Inc.—Oregon
93. Browning-Ferris Industries of Oyster Bay, Inc.—Delaware
94. Browning-Ferris Industries of Paterson, N.J., Inc.—New Jersey
95. Browning-Ferris Industries of Pennsylvania, Inc.—Delaware
96. Browning-Ferris Industries of Philadelphia, Inc.—Pennsylvania
97. Browning-Ferris Industries of Puerto Rico, Inc.—Puerto Rico
98. Browning-Ferris Industries of Quincy, Illinois, Inc.—Iowa
99. Browning-Ferris Industries of Rhode Island, Inc.—Delaware
100. Browning-Ferris Industries of Rochester, Inc.—Minnesota
101. Browning-Ferris Industries of South Atlantic, Inc.—North Carolina
102. Browning-Ferris Industries of South Jersey, Inc.—New Jersey
103. Browning-Ferris Industries of Southern Illinois, Inc.—Delaware
104. Browning-Ferris Industries of Southeastern Michigan, Inc.—Michigan
105. Browning-Ferris Industries of Southern Illinois, Inc.—Illinois
106. Browning-Ferris Industries of Springfield, Inc.—Missouri
107. Browning-Ferris Industries of St. Louis, Inc.—Delaware
108. Browning-Ferris Industries of Tennessee, Inc.—Tennessee
109. Browning-Ferris Industries of Utah, Inc.—Utah
110. Browning-Ferris Industries of Vermont, Inc.—Vermont
111. Browning-Ferris Industries of West Virginia, Inc.—Delaware
112. Browning-Ferris Industries of Western Jersey, Inc.—New Jersey
113. Browning-Ferris Industries of Wisconsin, Inc.—Wisconsin
114. Browning-Ferris Industries of Wyoming, Inc.—Wyoming
115. Butts County Development Corp.—Georgia
116. Cape Coral Disposal Service, Inc.—Florida
117. CECOS International, Inc.—New York
118. CMS Development Corp.—North Carolina
119. Cendor Waste Transportation, Inc.—Texas
120. DeWatering Services, Inc.—Louisiana
121. Disposal Specialists, Inc.—Vermont
122. Dooley Equipment Corporation—Massachusetts
123. E & E Hauling, Inc.—Illinois
124. Environmental Development Corp.—Puerto Rico
125. Geneva Waste Services, Inc.—New York
126. George Fenske Sanitary Service, Inc.—Minnesota
127. Hall's Ferry Investments, Inc.—Missouri
128. Heavy Equipment Leasing Services Co., Inc.—New York
129. Health Management, Inc.—
130. Health Management of New Orleans, Inc.—Louisiana
131. Hennepin Transfer, Inc.—Minnesota

132. Highway 36 Land Development Company—Colorado
133. Homestead Land Corp.—Pennsylvania
134. HL-NIW, Inc.—New York
135. Indoco, Inc.—Texas
136. International Disposal Corp.—Texas
137. International Disposal Corp. of California—California
138. International Disposal Corporation of Indiana—Delaware
139. International Disposal Corporation of Kansas—Kansas
140. Jeffco Land Reclamation Company—Colorado
141. Jeffco Land Reclamation, Inc.—Missouri
142. Jefferson Pike Landfill, Inc.—Tennessee
143. Joe Ball Sanitation Service, Inc.—New York
144. Karas Trucking Co., Inc.—Ohio
145. Keller Canyon Landfill Company—California
146. LaGrange Disposal Co., Inc.—Illinois
147. Land Reclamation, Inc.—New York
148. Landfill, Inc.—Colorado
149. Landfill, Inc.—Missouri
150. Louis Kmito & Son, Inc.—Massachusetts
151. Lyon Development Co.—Michigan
152. Merrimack Valley Medical Services Company, Inc.—Massachusetts
153. National Disposal Service of Nebraska, Inc.—Nebraska
154. Newco Waste Systems, Inc.—New York
155. Newco Waste Systems of New Jersey, Inc.—New Jersey
156. Niagara Landfill, Inc.—New York
157. Niagara Recycling, Inc.—New York
158. Niagara Sanitation Company, Inc.—New York
159. Northern Disposal, Inc.—Massachusetts
160. Pine Bend Landfill, Inc.—Minnesota
161. Pine Island Disposal, Inc.—Florida
162. RHF, Inc.—Texas
163. RPS, Inc.—Colorado
164. RWCGP, Inc.—Texas
165. Refuse Transfer, Inc.—Minnesota
166. Regional Landfill, Inc.—Texas
167. Residential Service, Inc.—Nebraska
168. Resource Recovery Corporation—Massachusetts
169. River City Refuse Removal, Inc.—Wisconsin
170. Rot's Disposal Service, Inc.—Illinois
171. Springfield Relay Systems, Inc.—Missouri
172. Tanis Leasing Company—Florida
173. TRC, Inc.—Pennsylvania
174. T.R.A.S.H., Inc.—Tennessee
175. Town and Country Waste Service, Inc.—Wisconsin
176. Troy Area Landfill, Inc.—Wisconsin
177. UWL, Inc.—

178. Warner Hill Development Company—Ohio
 179. Warner Hill Improvement Company—Ohio
 180. Waste Disposal, Inc.—Kansas
 181. West Roxbury Crushed Stone Co.—Massachusetts
 182. Westowns Disposal Systems, Inc.—Wyoming
 183. Woodlake Sanitary Service, Inc.—Minnesota
 Sidney L. Strickland, Jr.,
 Secretary
 [FR Doc. 90-20831 Filed 9-4-90; 8:45 am]
 BILLING CODE 7035-01-M

[Ex Parte No. 483]

Railroad Revenue Adequacy—1988 Determination

AGENCY: Interstate Commerce Commission.

ACTION: Extension of time to file Motions for Reconsideration of Commission's final order.

SUMMARY: On August 7, 1990, the Commission served the final decision in this proceeding (6 ICC 2d 933 (1990)). Edison Electric Institute (EEI) has requested an extension of time of two weeks, until September 10, 1990, to file a Motion for Reconsideration. The request shall be granted. Additional time is necessary for EEI to prepare its comments. Any other party wishing to submit a similar motion will also have an additional two weeks in which to respond.

DATES: Motions for Reconsideration of the Commission's final decision are due September 10, 1990.

ADDRESSES: Send an original and 15 copies of comments to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Ward L. Ginn, Jr., (202) 275-7489. (TDD for the hearing impaired: (202) 275-1721).

By the Commission, Edward J. Philbin, Chairman.

Dated: August 28, 1990.

Sidney L. Strickland, Jr.,
 Secretary.
 [FR Doc. 90-20833 Filed 9-4-90; 8:45 am]
 BILLING CODE 7035-01-M

[Finance Docket No. 31722]

Exemption, A & F, Inc.—Acquisition and Operation Exemption—Alabama & Florida Railroad Co., Inc.

A & F, Inc. (A & F), a non-carrier, has filed a notice of exemption to acquire and operate approximately 76.86 miles

of rail line in Butler, Coffee, Covington, and Geneva Counties, AL. The line is owned by Alabama & Florida Railroad Company, Inc. (AFR), and extends between milepost 547.54, near Georgiana, and milepost 624.4, near Geneva. As part of the transaction, AFR will assign to A & F local and overhead trackage rights over a 2-mile line of the Andalusia & Conecuh Railroad Company, Inc. (A&C), that intersects the Georgiana-Geneva line at Andalusia, AL, and extends to Gantt, AL.¹

The transaction is expected to be consummated on or after August 13, 1990.

Any comments must be filed with the Commission and served on: Stephen W. McVearry, Weiner, McCaffrey, Brodsky, Kaplan & Levin, 1350 New York Avenue, NW., suite 800, Washington, DC 20005.

A & F shall retain its interest in and take no steps to alter the historic integrity of all sites and structures on the line that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

By the Commission, Richard B. Felder, Acting Director, Office of Proceedings.

Dated: August 29, 1990.

Sidney L. Strickland, Jr.,
 Secretary.
 [FR Doc. 90-20832 Filed 9-4-90; 8:45 am]
 BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to Clean Air Act; U.S. Washington Demolitions, Inc.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on August 16, 1990 a proposed consent decree in *United States v. Washington Demolitions, Inc.*, Civil Action No. 90-1410, was lodged with the United States District Court for the District of Kansas. The proposed consent decree concerns a complaint filed by the United States that alleged violations of the Clean Air Act, 42 U.S.C.

¹ A&C's grant of trackage rights to AFR was approved in Finance Docket No. 30917, *Alabama & Florida Railroad Company, Inc.—Trackage Rights—Andalusia & Conecuh Railroad Company, Inc.* (not printed), served October 10, 1988.

7401 *et seq.*, and its implementing regulations codified at 40 CFR part 61, subpart M, at Washington University's Louderman Hall, and the McPherson, Hutchinson, and Sedan Post Offices (the facilities) which are located in St. Louis, Missouri and McPherson, Hutchinson and Sedan, Kansas, respectively. The complaint alleged that defendant Washington Demolitions, Inc., failed to adequately wet friable asbestos material while being stripped or removed as well as failing to adequately wet friable asbestos material which had been removed or stripped from the facility while awaiting collection and disposal in accordance with the NESHAP workplace standards. The complaint sought injunctive relief to require compliance with the asbestos NESHAP standards and civil penalties for past violations. The consent decree requires the defendant to pay \$75,000 in settlement of the United States' claims for civil penalties. In addition, the decree requires the defendant to develop an Asbestos Control Program and the successful completion of an EPA approved Employee Asbestos Training Program for all of Defendant's employees.

The Department of Justice will receive for a period of thirty (30) days from the date of the publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, United States Department of Justice, Washington, DC 20530, and should refer to *United States v. Washington Demolitions, Inc.*, D.J. Ref. No. 90-5-2-1-1416.

The proposed consent decree may be examined at the office of the United States Attorney for the District of Kansas, 306 U.S. Courthouse, 401 North Market Street, Wichita, Kansas 67202 and at the Region VII Office of the United States Environmental Protection Agency, Office of Regional Counsel, 726 Minnesota Avenue, Kansas City, Kansas 66101. Copies of the consent decree may also be examined at the Environmental Enforcement Section Document Center, 1333 F Street NW., suite 600, Washington, DC 20004, 202-347-7829. A copy of the proposed decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of \$1.75 payable to the Aspen Systems Corporation.

Richard B. Stewart,
Assistant Attorney General, Environment and
Natural Resources Division.

[FR Doc. 90-20751 Filed 9-4-90; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-24,362]

Action Tungsram, Inc.; East Brunswick, NJ, Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 5, 1990 applicable to all workers of Action Tungsram, Inc., East Brunswick, New Jersey. The notice was published in the Federal Register on July 24, 1990 (55 FR 30047).

Based on new information from the company, several workers were retained for close down operations beyond the July 1, 1990 termination date. Therefore, the certification is amended by deleting the previous termination date and inserting a new termination date of August 24, 1990. The amended notice applicable to TA-W-24,362 is hereby issued as follows:

All workers of Action Tungsram, Incorporated, East Brunswick, New Jersey who became totally or partially separated from employment on or after January 1, 1990 and before August 24, 1990 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this August 27, 1990.

Stephen A. Wandner,
Deputy Director, Office of Legislation &
Actuarial Services, UIS.

[FR Doc. 90-20841 Filed 9-4-90; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-24, 549]

Glen Raven Mills, Inc. Rockingham, NC; Negative Determination Regarding Application for Reconsideration

By an application dated August 20, 1990 the company requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on July 20, 1990 and published in the Federal Register on August 3, 1990 (55 FR 31633).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances;

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake

in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The company claims that sweater imports have affected their production, sales and employment.

Investigation findings show that the Glen Raven workers produce acrylic yarn used by sweater producing firms.

The Department's denial was based on the fact that the increased import criterion of the Group Eligibility Requirements of the Trade Act was not met. U.S. imports of yarn decreased in 1988 compared to 1987 and in the first nine months of 1989 compared to the same period in 1988.

Further, under the Trade Act of 1974, only increased imports of articles like or directly competitive with the articles produced by the workers' firm or appropriate subdivision can be considered. Acrylic yarn is not like or directly competitive with sweaters. This issue was addressed in *United Shoe Workers of America, AFL-CIO v. Bedell*, 506 F.2d 174, (DC Cir. 1974). The court held that imported finished women's shoes were not like or directly competitive with shoe components—shoe counters. Similarly, acrylic yarn incorporated into the finished article (sweaters) cannot be considered like or directly competitive with sweaters.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this August 29, 1990.

Robert O. Deslongchamps,
Director, Office of Legislation and Actuarial
Services, UIS.

[FR Doc. 90-20836 Filed 9-4-90; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-24,419]

Love Fashions Hoboken, NJ, Investigations Regarding Certification of Eligibility to Apply for Worker Adjustment Assistance; Correction

This notice corrects the name of the workers' firm for the subject petition published on May 29, 1990 in the Federal Register on page 21803 of FR Document 90-12255.

On the last line of column one of the Appendix the name of the workers' firm is corrected to read "Love Fashions" instead of La Fashions.

Signed at Washington, DC, this 28th day of August 1990.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 90-20839 Filed 9-4-90; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-24,419]

**Love Fashions Hoboken, NJ;
Determinations Regarding Eligibility to
Apply for Worker Adjustment
Assistance; Correction**

This notice corrects the name of the workers' firm for the subject petition published on July 24, 1990 in the Federal Register on page 30046 of FR Document 90-17247.

Under Affirmative Determinations, in column 3 line 42 on page 30046, the name of the workers' firm is corrected to read "Love Fashions" instead of La Fashions.

Signed at Washington, DC, this 28th day of August 1990.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 90-20840 Filed 9-4-90; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-24,426]

**Raw Hide Fleshing Machine Corp.
Macungie, PA; Negative Determination
Regarding Application for
Reconsideration**

By an application dated August 6, 1990 the company requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on July 6, 1990 and published in the Federal Register on July 24, 1990 (55 FR 30046).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

- (1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;
- (2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or
- (3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or the law justified reconsideration of the decision.

The company claims that foreign competition and foreign-made fur garments caused worker separations at Raw Hide. Also, the company submitted the name of a customer alleged to have imported fur processing machinery.

Investigation findings show that the Raw Hide produces machinery (knives, grinders and tanning machines) for processing animal furs.

The Department's denial was based on the fact that the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act of 1974 was not met. The "contributed importantly" test is generally demonstrated through a survey of the workers' firm's customers. The Department's survey of the subject firm's major customers, which included the one cited by the company as importing, showed that the customers either did not import or had reduced imports of fur processing machinery during the period applicable to the petition.

In order for workers to obtain a worker group certification all three of the Group Eligibility Requirements of the Trade Act of 1974 must be met—(1) a significant decrease in employment, (2) an absolute decrease in sales or production, and (3) an increase of imports of articles that are like or directly competitive with those produced at the workers' firm and which "contributed importantly" to declines in sales or production and employment at the workers' firm in the period applicable to the petition.

Foreign competition, in itself, would not form a basis for a worker group certification—only increased imports of articles like or directly competitive with those produced by the petitioning workers' firm which "contributed importantly" to declines in sales or production and employment would form such a basis.

Also, foreign-made fur garments would not form a basis for certification. Imports of fur garments cannot be considered like or directly competitive with fur processing machinery made at the firm. Imports of fur processing machinery must be considered in determining the eligibility of workers to qualify for trade adjustment assistance benefits.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this August 28, 1990.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 90-20837 Filed 9-4-90; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-24, 488]

**Uranerz, USA, Inc. Casper, WY;
Negative Determination Regarding
Application for Reconsideration**

By an application dated August 13, 1990 the company requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on July 27, 1990 and published in the Federal Register on August 9, 1990 (55 FR 32503).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

- (1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;
- (2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or
- (3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The company claims that the imports of low cost foreign uranium had a major effect on domestic uranium prices which led to the closure of the Casper, Wyoming mine.

Investigation findings show that the workers were engaged in efforts to obtain a commercial mining permit and there was no production or sales of uranium since 1984. The workers were denied eligibility to apply for adjustment assistance on July 12, 1985, TA-W-15, 970.

Since there was no production during the relevant time period, the workers did not produce an article within the meaning of section 222(3) of the Trade Act. Where there is no production the workers are generally outside the purview of the Trade Act.

Workers providing a service may be certified but only under very limited conditions. The conditions are that their separations must be caused importantly by a reduced demand for their services from a parent firm, a firm otherwise related to the subject firm by ownership or a firm related by control. In any event, the reduction in demand for services must originate at a domestic production facility whose workers

independently meet the statutory criteria for certification and the reduction must directly relate to the product impacted by imports. These conditions have not been met for workers at Uranerz in Casper.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this August 29, 1990.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, ULS.

[FR Doc. 90-20836 Filed 9-4-90; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-90-129-C]

Davidson Mining, Inc., Petition for Modification of Application of Mandatory Safety Standard

Davidson Mining, Inc., P.O. Box 209, Danville, West Virginia 25053 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its No. 1 Mine (I.D. No. 46-06898) located in Boone County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that at least one entry in each return aircourse be examined in its entirety on a weekly basis.

2. Due to adverse roof conditions, a return aircourse cannot be safely traveled and to require an examiner to perform weekly examinations would result in a diminution of safety.

3. As an alternate method, petitioner proposes to establish evaluation points at specific locations where tests for methane and the quantity of air would be monitored weekly.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson

Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 5, 1990. Copies of the petition are available for inspection at that address.

Dated: August 28, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-20834 Filed 9-4-90; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-90-128-C]

Davidson Mining, Inc., Petition for Modification of Application of Mandatory Safety Standard

Davidson Mining, Inc., P.O. Box 209, Danville, West Virginia 25053 has filed a petition to modify the application of 30 CFR 75.202(a) (protection from falls of roof, face and ribs) to its No. 1 Mine (I.D. No. 46-06898) located in Boone County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that the roof, face and ribs of areas where persons work or travel be supported or controlled to protect persons from hazards related to falls of the roof, face or ribs and coal or rock outbursts.

2. As an alternate method, petitioner seeks to abandon 900 ft. of the No. 1 return airway.

3. In support of this petition, the petitioner states that roof conditions have deteriorated thus exposing the mine examiner to hazards associated with roof falls. Rehabilitation of the deteriorating roof would expose other workers to hazardous conditions; thereby resulting in a diminution of safety.

4. For these reasons petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 5, 1990. Copies of the petition are available for inspection at that address.

Dated: August 28, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-20835 Filed 9-4-90; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL WOMAN'S BUSINESS COUNCIL

Hearing

AGENCY: National Women's Business Council.

ACTION: Notice of hearing.

SUMMARY: In accordance with the Women's Business Ownership Act, Public Law 100-533 as amended, The National Women's Business Council announces a forthcoming hearing. The focus of the hearing will be to hear testimony and gather information regarding international trade issues, access to credit, procurement and certification as they affect women in business. Testimony will be received from public and private sector decision-makers and entrepreneurs, professional experts, corporate leaders and representatives of key interest groups and organizations.

DATES: September 10, 1990, 10 a.m. to 4 p.m.

ADDRESSES: Dirksen Federal Office Building, room 2525 219 S. Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Helen W. Robbins, Executive Director or Helen I. Barnhill, Deputy Director, National Women's Business Council, 1441 L Street, NW., suite 414, Washington, DC 20416 (202) 653-8080.

TYPE OF MEETING: Open.

Helen W. Robbins,
Executive Director.

[FR Doc. 90-20940 Filed 9-4-90; 8:45 am]

BILLING CODE 6820-AB-M

Hearing

AGENCY: National Women's Business Council.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Women's Business Ownership Act, Public Law 100-533 as amended, The National Women's Business Council announces a forthcoming meeting. Council members will report the status of their assigned subcommittees.

DATES: September 11, 1990, 10 a.m. to 12 p.m.

ADDRESSES: Dirksen Federal Office Building, room 2525 219 S. Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Helen W. Robbins, Executive Director or Helen L. Barnhill, Deputy Director, National Women's Business Council, 1441 L Street, NW., suite 414, Washington, DC 20416 (202) 653-8080.

TYPE OF MEETING: Closed.

Helen W. Robbins,

Executive Director.

[FR Doc. 90-20941 Filed 9-4-90; 8:45 am]

BILLING CODE 6820-AB-M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice, P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from August 13, 1990 through August 23, 1990. The last biweekly notice was published on August 22, 1990 (FR 34361).

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of

a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this *Federal Register* notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 5, 1990, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set

forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the

hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (Project Director): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the

General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendment request: June 16, 1988, as supplemented on September 20, 1989, and August 3, 1990.

Description of amendment request: The initial request, as supplemented, proposes the addition of Technical Specification (TS) operability and surveillance requirements for the core exit thermocouple (CET) systems at the Calvert Cliffs Nuclear Power Plant, Units 1 and 2, TS Table 3.3-10, "Post-Accident Monitoring Instrumentation" and Table 3.4.3-10, "Post Accident Monitoring Instrumentation Surveillance Requirements."

The June 16, 1988, request was initially noticed on October 19, 1988 (53 FR 40982). On September 20, 1989, Baltimore Gas and Electric Company (BG&E) responded to the NRC staff's request for additional information dated August 21, 1989, in relation to the location of the CETs, calibration concerns, undetected failures, schedule for replacement of unqualified thermocouples, and determination of operability. Then, by letter dated August 3, 1990, BG&E provided supplemental information and details related to the power supplies and physical location of the CETs in the reactor core.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92.

The licensee addressed the above three standards in the amendment application. In regard to the three

standards, the following analysis is provided:

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment provides TS operability and surveillance requirements for the CETs which have been installed to enhance the ability of the plant operator to identify situations which could lead to inadequate core cooling and take appropriate actions to recover. The CET instrumentation is not required for any previously evaluated accidents; is not required for safe shutdown; and is only used to provide information of the potential for inadequate core cooling.

Thus, the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Use of the modified specification would not create the possibility of a new or different kind of accident from any accident previously evaluated.

Failure of this equipment would not result in any unanalyzed accident. The equipment is simply passive monitoring instrumentation. Although the CETs have been utilized in the Emergency Procedures for corroboration of selected indications, no change to normal operating procedures is involved. The CETs are intended solely to enhance the ability of the operator to manage accidents and transients by providing the operator with additional corroborative information. Also, no new hardware is being added to the plant as a result of this proposed change, no existing equipment is being modified, nor are any significantly different types of operations being introduced.

Thus, the proposed new amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Use of the modified specification would not involve a significant reduction in a margin of safety.

The proposed amendment provides assurance of the availability of an additional means for monitoring the proper functioning of the engineered safety features system in maintaining the core cooling function. Redundant channels of environmentally qualified instrumentation are provided to assure that the information presented to the plant operators accurately reflects the trend in temperature of reactor coolant in the vessel.

Thus, the proposed amendment does not involve a reduction in a margin of safety.

The staff has reviewed and agrees with the licensee's analysis of the significant hazards consideration determination. Based on the review and the above discussion, the staff proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room

location: Calvert County Library, Prince Frederick, Maryland.

Attorney for licensee: Jay E. Silbert, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Robert A. Capra.

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of amendment request: July 24, 1989.

Description of amendment request: The amendment revises the Technical Specification (TS) by specifying the normal flow path for primary containment nitrogen control (vent/makeup) and pressure control when operating in operational conditions 1, 2, and 3.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists [10 CFR 50.92(c)] for a proposed amendment to a facility operating license. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not:

- (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or
- (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or
- (3) Involve a significant reduction in a margin of safety.

The licensee provided an analysis that addressed the above three standards in the amendment application.

(1) The proposed change to the TS specifies the normal flow path for primary containment nitrogen control (vent/makeup) and pressure control when the plant is operating in modes 1, 2, and 3. The proposed change to the TS does not involve a significant increase in the probability or consequences of an accident previously evaluated because the change does not involve physical modifications to the plant or introduce a new mode of operation. The proposed change is more restrictive on plant operations than the current TS. The current TS allows unrestricted venting of primary containment during power operation through the 6-inch primary containment isolation valves. The proposed change will now limit venting of the primary containment through the 1-inch primary containment isolation valves. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) The proposed change to the TS as discussed in (1) above is more restrictive on

plant operations. In addition, the 1-inch vent path is qualified as is the 6-inch vent path currently defined in the TS. Therefore, the proposed change to the TS does not create the possibility of a new or different kind of accident from any previously analyzed.

(3) The proposed change does not involve a significant reduction in the margin of safety because, as discussed in (1) above, the proposed change imposes more restrictive requirements on venting and purging the primary containment during power operation. The more restrictive requirements are implemented by redefining the normal flow path for primary containment nitrogen control (vent/makeup) and pressure control when at power operations through the 1-inch containment isolation valves rather than the 6-inch valves as currently allowed by the TS. This flow path has previously been reviewed by the staff in NUREG-0798 Supplement 3 Appendix H.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and the above discussions, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room
location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Attorney for licensee: John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226.

NRC Project Director: Robert C. Pierson.

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of amendment request: March 28, 1990.

Description of amendment request: The proposed amendment would revise condition (9) of the license issued July 15, 1985, and would remove fire protection Technical Specifications 3/4.3.7.3, 3/4.7.7.1 through 3/4.7.7.6, 3/4.7.8, and 6.2.2.e, and the corresponding section 3/4 Bases, and revise Technical Specifications 6.2.2.6 and 6.5.1.6. Generic Letters 86-10, dated April 24, 1986, and 88-12, dated August 2, 1988, provided guidance to licensees to request removal of the fire protection Technical Specifications. The licensee's proposed amendment is in response to these Generic Letters.

Basis for proposed no significant hazards consideration determination: The staff has evaluated this proposed amendment and determined that it involves no significant hazards considerations. According to 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated; or
2. Create the possibility of a new or different kind of accident from any accident previously evaluated; or
3. Involve a significant reduction in margin of safety.

The proposed revision to the License Condition is in accordance with the guidance provided in Generic Letter 86-10 for licensees requesting removal of fire protection Technical Specifications. The incorporation of the NRC approved Fire Protection Program and the former TS requirements by reference to the procedures implementing these requirements, into the Updated Final Safety Analysis Report (UFSAR), and the use of the standard License Condition on fire protection will ensure that the Fire Protection Program, including the systems, the administrative and technical controls, the organization, and the other plant features associated with fire protection will be on a consistent status with other plant features described in the UFSAR. Also, the provisions of 10 CFR 50.59 would then apply directly for changes the licensee desires to make in the Fire Protection Program. In this context, the determination of the involvement of an unreviewed safety question defined in 10 CFR 50.59(a)(2) would be made based on the "accident . . . previously evaluated" as being the postulated fire in the fire hazards analysis for the fire area affected by the change. Hence, the proposed License Condition establishes an adequate basis for defining the scope of changes to the Fire Protection Program which can be made without prior Commission approval, i.e., without introduction of an unreviewed safety question. The revised License Condition and the removal of the existing TS requirements on fire protection does not create the possibility of a new or different kind of accident from those previously evaluated. They also do not involve a significant reduction in the margin of safety since the proposed License Condition does not alter the requirement that an evaluation be performed for the identified of an unreviewed safety question for each proposed change to the Fire Protection Program. Consequently, the proposed License Condition and the removal of the fire protection requirements do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed modification of Administrative Controls, section 8 of the Technical Specifications provides requirements consistent with the

administrative control requirement for other programs addressed by License Conditions. Specifically, the responsibilities of the Onsite Review Organization will include a Fire Protection Program review under Specification 6.5.1.6. The changes are administrative in nature and do not impact the operation of the facility in a manner that involves significant hazards considerations.

The proposed amendment includes the removal of fire protection Technical Specifications in four areas: (1) Fire detection systems, (2) fire suppression systems, (3) fire barriers, and (4) fire brigade staffing requirements. While it is recognized that a comprehensive Fire Protection Program is essential to plant safety, many details of this program that are currently addressed in Technical Specifications can be modified without affecting nuclear safety. With the removal of these requirements from the Technical Specifications, they have been incorporated into the Fire Protection Program implementing procedures. Hence, with the additions to existing administrative control requirements that are applicable to the Fire Protection Program and the revised License Condition, there will be suitable administrative controls to ensure that any licensee initiated changes to these requirements, that have been removed from the Technical Specifications, will receive careful review by competent individuals. Again, these changes are administrative in nature and do not impact the operation of the facility in a manner that involves significant hazards considerations.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Attorney for licensee: John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226.

NRC Project Director: Robert C. Pierson.

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: April 24, 1990.

Description of amendment request: The proposed amendments would provide for the relocation of tabular listings of containment penetration conductor overcurrent protective devices from the Technical Specifications (TSs) to chapter 16 of the Final Safety Analysis Report (FSAR), "Selected Licensee Commitment Manual." Specifically, TS Table 3.8-1a, "Unit 1 Containment Penetration

Conductor Overcurrent Protective Devices," and TS Table 3.8-1b, "Unit 2 Containment Penetration Conductor Overcurrent Protective Devices," would be deleted, and references to them in TSs 3/4.8.4 would be changed to reference FSAR chapter 16. The TS Index would be updated to reflect this deletion.

Basis for proposed no significant hazards consideration determination: TS Tables 3.8-1a and 3.8-1b list devices (deenergizing circuit breakers and fuses) associated with the protection of containment electrical penetrations and penetration conductors due to excessive current. For each device number, the tables identify its location and the associated system powered by the circuit. The proposed amendments involve no substantive changes to the contents of the tables, only format changes due to their relocation from the TSs to the FSAR. TS 3.8.4 requires, as a limiting condition for operation (LCO), that the devices listed in these tables be maintained operable in Modes 1, 2, 3, and 4; TS 4.8.4 requires, as a surveillance requirement (SR), that the devices periodically be demonstrated operable and functionally tested. These LCOs and SRs would not be changed by the proposed amendments except to reflect the revised location of the tables. Consequently, the proposed changes are of an administrative nature.

In the event future changes are needed to this information in the FSAR, the proposed changes would be evaluated in accordance with the process described in 10 CFR 50.59. Under 10 CFR 50.59, proposed changes determined by the licensee not to involve an unreviewed safety question may be made without prior Commission approval. A report of such changes, including a summary of the safety evaluation of each, would be submitted annually to the Commission. Additionally, the licensee requires that all changes to the FSAR chapter 16 receive Station Manager approval, and that, upon issuance, all revisions to FSAR Chapter 16 be distributed to holders of the Selected Licensee Commitment Manual, including the NRC.

The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). The Commission's staff has reviewed the proposed changes to the TSs and finds that the proposed changes would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. Because the proposed changes would not affect the LCOs, SRs, or operability

requirements of the subject devices or the equipment they protect, there would be no effect on a previously analyzed accident.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated. Because there would be no changes in hardware or in the way the plant is operated, the potential for an unanalyzed accident would not be created and no new failure modes would be introduced.

(3) Involve a significant reduction in a margin of safety. Because the existing TSs would continue to specify the same requirements with regard to operation and surveillance of these devices and no substantive change would be involved with hardware or operating procedures, and because future changes would be controlled in accordance with 10 CFR 50.59, existing margins of safety would not be decreased.

Accordingly, the Commission proposes to determine that the application for amendments involves no significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242.

NRC Project Director: David B. Matthews.

Duke Power Company, Docket Nos. 50-269, 50-270 and 50-287, Oconee Nuclear Station, Units 1, 2 and 3, Oconee County, South Carolina

Date of amendment request: May 31, 1988, as revised and supplemented April 26, June 5, and August 1, 1990.

Description of amendment request: The proposed amendments would revise the Technical Specifications (TSs) to establish a limit of 0.35 gallons per minute (gpm) primary-to-secondary leakage through the tubes of any one steam generator (SG) and delete the requirement that an assessment be made as to whether operations may continue safely for leak rates less than 0.3 gpm. Presently, Oconee Unit 1 has a limit of 0.3 gpm for total leakage from both SGs; Units 2 and 3 have no limits. In addition, administrative changes are proposed to delete redundant requirements to report SG tube leaks in TS 3.1.6.4 and correct outdated NRC organizational addresses in TS 4.17.6.a. The licensee withdrew a request to delete the requirement to report results of SG tube inspections to the NRC in TS 4.17.6.c. A Notice of Consideration of Issuance of Amendments to Facility

Operating Licenses and Opportunity for Hearing in connection with the May 31, 1988, application was published in the Federal Register on July 29, 1988 (53 FR 28736).

Basis for proposed no significant hazards consideration determination: The Commission has provided standards (10 CFR 50.92(c)) for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

In regard to the proposed amendments, the licensee provided an evaluation of the proposed changes with respect to those three standards:

(1) The proposed amendments to TS 3.1.6.4 would require a consistent primary-to-secondary leakage limit of 0.35 gpm for all three Oconee units and would delete the requirement to assess continued operations for leak rates less than 0.3 gpm. Currently, TS 3.1.6.4 limits Oconee Unit 1 to 0.3 gpm total primary-to-secondary leakage from both SGs and has no specific leakage limits for Oconee Units 2 and 3. The limit of 0.3 gpm for Unit 1 was imposed in 1977 due to tube degradation in the Unit 1 SGs. Subsequent corrective actions have enabled the licensee to effectively manage leakage from tube degradation. The revised leakage limit, while greater than this previous limit, is conservative relative to the 1.0 gpm leakage assumed in the Oconee Final Safety Analysis Report (FSAR). In addition, plant operating procedures provide assurance that an assessment of plant operations will be made for leak rates less than the TS limits. Therefore, the requested amendments will not involve a significant increase in the probability or consequences of any accident previously evaluated.

The addition of leak rate limit specifications for Units 2 and 3 results in more stringent requirements for these units than the present TS requirements. Deletion of the reporting requirements on SG tube leaks and correction of the reference to NRC addressees are all administrative changes. As such, these changes will not involve an increase in the probability or consequences of any accident previously evaluated.

(2) The proposed changes specifying a 0.35 gpm leak rate limit for each SG would provide a consistent TS leakage limit for all three Oconee units. The proposed revision would not result in any plant modification or operating procedure changes. All other changes are administrative in nature. Thus, these changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The leakage limit of 0.35 gpm is conservatively bounded by the present FSAR limit of 1.0 gpm total primary-to-secondary leakage. Licensee corrective actions have effectively managed leakage from tube degradation. In addition, for Units 2 and 3, the proposed revision specifying a leak rate limit of 0.35 gpm constitutes an additional limitation not presently included in the Oconee TSs. All other changes are administrative in nature. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The Commission's staff has considered the proposed changes and agrees with the licensee's evaluation with respect to the three standards. On this basis, the Commission proposes to determine that the proposed amendments involve no significant hazards consideration.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691.

Attorney for licensee: J. Michael McGarry, III, Bishop, Cook, Purcell and Reynolds, 1400 L Street, NW., Washington, DC 20005.

NRC Project Director: David B. Matthews.

Entergy Operations, Inc., Docket No. 50-313, Arkansas Nuclear One, Unit 1, Pope County, Arkansas

Date of amendment request: July 7, 1990.

Description of amendment request: The proposed amendment would revise Technical Specification 4.7.2 regarding the verification of proper control rod drive patching. The licensee proposes to delete the wording pertaining to the two-inch upper travel limit of the control rod verification and reword the specification to denote the sufficient amount of travel needed to verify proper patching. The proposed amendment would also more accurately reflect the conditions under which patch verification is required.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards

consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee provided an analysis that addressed the above three standards in the amendment application.

(1) Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The proposed change would not increase the probability or consequence of any accident previously evaluated since the proposed change would not cause the plant to exceed the shutdown margin.

The proposed change is bounded by the Rod Ejection Accident discussed in FSAR section 14.2.2.4. When the reactor is subcritical, the boron concentration is maintained at a level that ensures that the reactor is at least one percent subcritical with the control rod of greatest worth fully withdrawn from the core. Thus, a rod ejection will not cause a nuclear excursion when the reactor is subcritical and all the other rods are in the core.

(2) Does Not Create the possibility of a New or Different Kind of Accident from any Previously Evaluated

The proposed change would not create the possibility of a new or different kind of accident from any previously analyzed since it would not introduce new systems, failure modes or other plant perturbations. Only the mode of operation is affected by this change. Each CRDM could be exercised over its full range of travel instead of within its current 2 inch range.

(3) Does Not Involve a Significant Reduction in the Margin of Safety

The proposed change would not involve a significant reduction in the margin of safety since the ability to control criticality would continue to be maintained with the same shutdown margin. If patching problems occur, the reading from the additional reed switches (over the full range of the position indicator assembly) would assist troubleshooting and repair operations.

Therefore, based on the reasoning presented above and the previous discussion of the amendment request, ANO has determined that the requested change does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's no significant hazards consideration determination analysis and agrees with its conclusion. Therefore, the staff proposes to determine that the requested amendment involves no significant hazards consideration.

Local Public Document Room

Location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Attorney for licensee: Nicholas S. Reynolds, Esq., Bishop, Cook, Purcell, & Reynolds, 1400 L Street, NW., Washington, DC 20005-3502.

NRC Project Director: Theodore R. Quay, Acting.

Entergy Operations, Inc., et al., Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: August 9, 1990.

Description of amendment request:

The amendment would change the Technical Specifications (TS) Section 6.0, "Administrative Controls" to reflect a position title change from Vice President, Nuclear Operations to Vice President, Operations GGNS.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

Entergy Operations, Inc. (the licensee), has provided an analysis about the issue of no significant hazards consideration using the three standards in 10 CFR 50.92 as reproduced below.

1. No significant increase in the probability or consequences of an accident previously evaluated results from this change.

a. The proposed change to the Administrative Controls section involves only the assignment of a new title to a nuclear executive. The scope of all responsibilities remains unchanged; that is, no responsibilities have been deleted and none have been added. Since the change is administrative, there is no alteration to the existing facility or its operation.

b. Therefore, the probability or consequences of previously analyzed accidents are not significantly increased.

2. The change would not create the possibility of a new or different kind of accident from any previously analyzed.

a. As previously stated, the proposed change affects the assignment of a position title only. This change does not affect plant configuration nor its operation.

b. Therefore, operating the plant with the proposed changes will not create the possibility of a new or different kind of

accident from any accident previously evaluated.

3. This change would not involve a significant reduction in the margin of safety.

a. Safety margin is established through the GGNS safety analyses as reflected in the TS, Limiting Conditions for Operations, and the Bases. The proposed change preserves all assumptions and results of the safety analyses.

b. The nature of the change is purely administrative, represents a change in nomenclature, and does not introduce or delete from the TS any responsibilities, requirements or qualifications.

c. Therefore, this change will not involve a significant reduction in the margin of safety.

The licensee has concluded that the proposed amendment meets the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards consideration.

The NRC staff has made a preliminary review of the licensee's no significant hazards consideration analysis and agrees with the licensee's conclusion. Accordingly, the Commission proposes to determine that the requested amendment involves no significant hazards consideration.

Local Public Document Room

Location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Bishop, Cook, Purcell and Reynolds, 1400 L Street, NW., 12th Floor, Washington, DC 20005-3502.

NRC Project Director: Theodore R. Quay, Acting.

Entergy Operations, Inc., et al., Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: August 10, 1990 as revised August 20, 1990.

Description of amendment request:

The amendment would change the Technical Specifications (TS) by adding a note to TS Table 4.8.2.1-1, "Battery Surveillance Requirements" to allow a battery charging current less than 2 amps instead of specific gravity limits to be used to determine battery operability when on float charge following a battery service or performance discharge test.

Basis for proposed no significant hazards consideration determination:

The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of

a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

Entergy Operations, Inc. (the licensee), has provided an analysis about the issue of no significant hazards consideration using the three standards in 10 CFR 50.92 as reproduced below.

1. No significant increase in the probability or consequences of an accident previously evaluated results from this change.

The D.C. power systems provide normal and emergency D.C. power for emergency auxiliaries and for control and switching during all modes of operation. As such, the unit batteries provide a support function to other systems and components required to shutdown the reactor and maintain it in a safe shutdown condition after an anticipated operational occurrence or a postulated design basis accident. The proposed change affects only the method of verifying OPERABILITY of the batteries. The batteries will continue to be OPERABLE and capable of supplying the loads required to mitigate the consequences of any previously evaluated accident.

Therefore, no significant increase in the probability or consequences of an accident previously evaluated results from this change.

2. This change would not create the possibility of a new or different kind of accident from any previously analyzed.

The proposed change to the surveillance requirement employs an effective method of demonstrating battery OPERABILITY following a discharge test. No changes to the batteries, the supported systems or components are proposed. The proposed change will not result in changes to the way the supported components and systems are operated.

Therefore, the possibility of a new or different accident from any previously analyzed is not created.

3. This change would not involve a significant reduction in the margin of safety.

The proposed change will allow the ESF batteries to be declared OPERABLE following a discharge test as soon as they have been completely recharged rather than waiting for the specific gravity to stabilize. Taking specific gravity measurements during this period of time may yield readings which do not accurately relate to the battery state of charge due to gradients within the battery electrolyte.

Although the specific gravity method is normally the preferred means of verifying OPERABILITY, the current IEEE standard recognizes the pattern of charging current delivered by a conventional voltage-regulated charger after a discharge provides another method for determining the state of charge. A stabilized charging or float current is a more accurate indicator of return to full charge following a discharge than specific gravity readings.

Using the alternate means of verifying OPERABILITY may result in a slight reduction in the margin of safety. However, the reduction is not considered to be significant because:

a. even though the battery's specific gravity has not stabilized, the battery is still capable of supplying the required loads.

b. the TS will require that the specific gravity be measured within 7 days following the discharge test.

c. the alternate means of verifying full charge is consistent with industry practice and fully sufficient to demonstrate the battery's OPERABILITY, and

d. the proposed change will allow the battery to be returned to service at an earlier time reducing the unavailability of the D.C. power division.

The licensee has concluded that the proposed amendment meets the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards consideration.

The NRC staff has made a preliminary review of the licensee's no significant hazards consideration analysis and agrees with the licensee's conclusion. Accordingly, the Commission proposes to determine that the requested amendment involves no significant hazards consideration.

Local Public Document Room

Location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154

Attorney for licensee: Nicholas S. Reynolds, Esquire, Bishop, Cook, Purcell and Reynolds, 1400 L Street NW., 12th Floor, Washington, DC 20005-3502 NRC Project Director: Theodore R. Quay, Acting

Entergy Operations Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: July 25, 1990.

Description of amendment request:

The proposed amendment would revise the Technical Specification to allow diesel generator start relays K110, K410 and K412, to continue to be tested at least every 62 days but exempt from the staggered test bases.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee provided

an analysis that addressed the above three standards in the amendment application.

The current Technical Specification requires a channel functional test of the safety injection actuation system automatic actuation logic at least every 62 days on a staggered test basis. The current design of the diesel generator start system and configuration for speed control results in additional diesel generator starts above and beyond that which is necessary to assure a reliable diesel generator system. The licensee proposes to modify the system to add speed control of the diesels in the emergency mode as part of the correction and to modify the testing frequency of three relays. The Technical Specification change will allow the relays to continue to be tested on at least a 62-day frequency but exempt from the staggered test basis.

The licensee's analysis for significant hazards is as follows:

All surveillance frequencies will remain unchanged. The surveillance, itself, remains unchanged. The proposed [sic] change only revises the test date for one surveillance on one channel. Since the channels do not share any relays that are tested in the surveillances, the functional capability of each channel will remain unaffected by changing the surveillance test date of one of the channels. Likewise, performing multiple, concurrent surveillances of the subject relays to allow only one EDG start per channel will not diminish the accuracy of the surveillance. If anything, there will be an increase in reliability of the EDG (and an implied reduction in the probability or consequences of accidents involving the failure of the EDGs) induced by a reduction in the number of challenges to the system. Therefore, the proposed changes will not increase the probability or consequences of an accident previously evaluated.

As stated above, the proposed change simply revises the test date for one surveillance on one channel, maintaining the same test frequency previously existing for that channel. The accuracy of the surveillances and the functional capability of the systems they address will remain unaffected. The proposed [sic] amendment will not create a new, unevaluated sequence of events. Therefore, the current plant safety analyses are bounding and the proposed amendment will not create the possibility of a new or different kind of accident than previously evaluated.

The proposed change simply revises the test date for one surveillance on one channel, maintaining the same test frequency previously existing for that channel. The accuracy of the surveillances and the functional capability of the systems they address remain unaffected. There will be no change to the initial conditions, system response, or any other parameter affecting an analyzed accident. Since the proposed

amendment does not result in the change of any safety limits, nor does it cause an established limit to be exceeded or significantly encroached upon, the proposed amendment will not involve a reduction in the margin of safety.

We have reviewed the licensee's analysis and agree with the findings. Therefore, the staff proposes to determine that the change does not involve a significant hazards consideration.

Local Public Document Room

Location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Attorney for licensee: Ernest L. Blake, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N St., NW., Washington, DC 20037

NRC Project Director: Theodore R. Quay, Acting Project Director.

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of amendment request:

November 20, 1989.

Description of amendment request:

The proposed change to the Technical Specifications would revise the Actions in section 3.3.10 for the Self Test System (STS). The change would add a new separate action for operation of the STS in operational modes 4 and 5 (shutdown and refueling).

Basis for proposed no significant hazards consideration determination:

The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The licensee has provided the following analysis of no significant hazards considerations using the Commission's standards.

(1) The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated because, based on studies previously performed, the proposed change does not significantly reduce the availability of the essential NSPS logic tested by the STS. Under the proposed change, the STS would

still be operated (manually) to perform testing at an appropriate frequency for verifying the integrity of the essential NSPS logic. Therefore, the proposed change does not adversely impact the capability of the NSPS-associated systems (the RPS, ECCS, CRVICS, etc.) to perform their intended function for mitigating the consequences of previously evaluated (design basis) accidents. The probability of occurrence of an accident previously evaluated is not increased since the scope of the proposed change is limited only to its (indirect) effect on systems designed to mitigate the consequences of such accidents.

(2) As the proposed change only affects operation of the STS, it involves no changes to the plant design and does not directly affect operation of the associated safety systems (RPS, ECCS, CRVICS, etc.). (The STS, including the interface circuitry between the STS and the NSPS logic it is designed to test, has been designed such that its operation has no effect [sic] on the active circuitry of the NSPS. For these reasons and due to its limited scope, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The proposed change does not involve a reduction in a margin of safety previously analyzed so far as a margin of safety applies to this change. The proposed change involves no changes to plant design and affects no setpoints or margins assumed in any accident analyses.

Based on the previous discussions, the licensee concluded that the proposed amendment request does not involve a significant increase in the probability or consequences of an accident previously evaluated; does not create the possibility of a new or different kind of accident from any accident previously evaluated; and does not involve a reduction in the required margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. The staff, therefore, proposes to determine that the licensee's request does not involve a significant hazards consideration.

Local Public Document Room
Location: Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Attorney for licensee: Sheldon Zabel, Esq., Schiff, Hardin and Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606.

NRC Project Director: John H. Hannon.

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of amendment request:
November 20, 1989.

Description of amendment request:
The proposed change to the Technical

Specifications would revise the value for the Secondary Containment minimum free volume from the initial estimate to the final value.

Basis for proposed no significant hazards consideration determination:

The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The licensee has reviewed the proposed request and has provided the following no significant hazards consideration determination:

(1) As indicated above, the proposed change revises the value in the Technical Specifications for the Secondary Containment minimum free volume to be consistent to the USAR. Therefore, the CPS accident analyses are not affected and the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) The proposed change does not affect the configuration or operation of any plant components, systems or structure. Therefore, the possibility of a new or different kind of accident is not created.

(3) As noted previously, the USAR value for the secondary containment minimum free volume was used in all applicable analyses; therefore, revising the Technical Specification as discussed does not reduce the margin of safety derived from the CPS safety analysis.

The NRC staff has reviewed the licensee's analysis and agrees with the licensee's conclusions. Therefore, the staff proposes to determine that the requested changes do not involve a significant hazards consideration.

Local Public Document Room
Location: The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Attorney for licensee: Sheldon Zabel, Esq., Schiff, Hardin and Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606.

NRC Acting Project Director: John N. Hannon.

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of amendment request:
November 20, 1989.

Description of amendment request:
The proposed amendment would revise Technical Specification 4.0.2 to delete the 3.25 limit on extending surveillance intervals as suggested in NRC Generic Letter 89-14.

Basis for proposed no significant hazards consideration determination:
The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The licensee has provided the following analysis of no significant hazards considerations using the Commission's standards.

(1) The proposed change does not involve a significant increase in the probability or consequences of a previously evaluated accident. As noted in the Generic Letter and in the proposed BASES for Specification 4.0.2, the limitations imposed by this Specification are based on engineering judgement and the recognition that the most probable result of any particular surveillance being performed is the verification of conformance with the Surveillance Requirements (irrespective of the allowed extension of the surveillance interval). The proposed change to Specification 4.0.2 should not therefore yield any significant degradation in the reliability (ensured by the performance of surveillance activities) of associated systems or components, including those designed to mitigate the consequences of design basis (previously evaluated) accidents or whose integrity is required to reduce the probability of occurrence of such accidents.

(2) The scope of the proposed change is limited only to the slight change in the maximum allowed extension of surveillance intervals. The proposed change does not affect the surveillance test requirements themselves (i.e., the acceptance criteria, scope, etc.). Nor does the proposed change affect plant design or operation (other than the impact on scheduling surveillance activities). Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated accident.

(3) The proposed changes do not involve a significant reduction in a margin of safety. As

noted in GL 89-14, removal of the 3.25 limit may effect an enhancement to plant safety since it will allow surveillances to be delayed (up to 25%) if plant conditions are not suitable for performing the surveillance when the 3.25 limit is reached.

Based on the previous discussions, the licensee concluded that the proposed amendment request does not involve a significant increase in the probability or consequences of an accident previously evaluated; does not create the possibility of a new or different kind of accident from any accident previously evaluated; and does not involve a reduction in the required margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. The staff, therefore, proposes to determine that the licensee's request does not involve a significant hazards consideration.

Local Public Document Room
Location: Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Attorney for licensee: Sheldon Zabel, Esq., Schiff, Hardin and Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606.

NRC Project Director: John N. Hannon.

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of amendment request: July 11, 1990.

Description of amendment request: The proposed amendment would revise the Technical Specifications in response to NRC Generic Letter (GL) 88-01. The proposed revisions would add a commitment to perform the Inservice Inspection Program for piping as identified in GL 88-01, would revise the Actions for out of service leakage detection systems, and add a Limiting Condition For Operation and Action for sudden increases in Reactor Coolant System leakage.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, (2) Create the possibility of a new or different kind of accident from

any accident previously evaluated, or (3) Involve a significant reduction in a margin of safety.

The licensee has reviewed the proposed request and has provided the following no significant hazards consideration determination:

(1) The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed changes incorporate additional and more stringent requirements into the Technical Specifications for monitoring and responding to reactor coolant leakage, particularly with respect to leakage from piping made of austenitic stainless steel. Under the revised Technical Specifications as proposed, an IGSCC condition in austenitic stainless steel piping may be recognized and appropriate action taken well before the gross failure of stainless steel piping could occur. The proposed changes are consistent with the "Staff Position on Leak Detection" section of Attachment A to Generic Letter 88-01. The change to Specification 4.0.5 enforces implementation of the applicable NRC Staff positions in the ISI program from the standpoint of the Technical Specifications, thus enhancing inspection and sampling practices for piping subject to intergranular stress corrosion cracking.

(2) The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed change does not involve any changes to plant design or any new mode of operation such that a new or different kind of accident must be considered.

(3) The proposed changes do not involve a significant reduction in a margin of safety because the proposed changes should enhance recognition and evaluation of a possible degradation (increased leakage due to cracked piping or welds) before a more severe condition or accident occurs.

The NRC staff has reviewed the licensee's analysis and agrees with the licensee's conclusions. Therefore, the staff proposes to determine that the requested changes do not involve a significant hazards consideration.

Local Public Document Room
Location: The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Attorney for licensee: Sheldon Zabel, Esq., Schiff, Hardin and Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606.

NRC Project Director: John N. Hannon

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of amendment request: July 11, 1990.

Description of amendment request: The proposed amendment would revise the Technical Specifications related to the Onsite Power Distribution

Systems—Operating. The Action requirements for the inverters associated with panels 1C71-S001C and D (Divisions III and IV) would be revised to only require that the High Pressure Core Spray system be declared inoperable and the Action requirements of Emergency Core Cooling Systems—Operating, be followed.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, (2) Create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) Involve a significant reduction in a margin of safety.

The licensee has reviewed the proposed request and has provided the following no significant hazards consideration determination:

(1) With respect to 120 VAC uninterruptible power, the plant's response to an inoperable inverter would be no more limiting than its response to deenergization of the bus that the inverter supports. Accordingly, the proposed change to the Action Statements for inoperable inverters are bounded by the Action Statements currently specified for the associated power distribution system. Moreover, as noted in the BASES for CPS Technical Specification 3/4.8.1, 3/4.8.2 and 3/4.8.3, Division III power is primarily dedicated to the HPCS system since the remaining safety functions supported by the Division III and IV inverters are fail-safe on a loss of power. Since the Technical Specifications currently contain provisions to allow the HPCS system to be inoperable for reasonable periods of time, and since the HPCS system is only one of several ECCS capable of providing the required emergency core cooling function, this proposed change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

(2) This proposed change does not involve any changes to the plant design, nor does it involve an introduction of any new or different modes of operation. On this basis, the proposed change cannot create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) This proposed change does not involve any changes to the operation or design of the associated HPCS system. As previously noted, with respect to the availability of the HPCS system and the associated Division III and IV power distribution systems, the proposed change to the electrical inverter

Action Statement is consistent with and bounded by the Action Statements currently specified for the uninterruptible 120 VAC bus to which the associated inverter is dedicated. There, this proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and agrees with the licensee's conclusions. Therefore, the staff proposes to determine that the requested changes do not involve a significant hazards consideration.

Local Public Document Room
Location: Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Attorney for licensee: Sheldon Zabel, Esq., Schiff, Hardin and Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606.

NRC Acting Project Director: John N. Hannon

Indiana Michigan Power Company,
Docket No. 50-315, Donald C. Cook Nuclear Plant, Unit No. 1, Berrien County, Michigan

Date of amendments request: July 23, 1990.

Description of amendments request: The proposed amendment would change Technical Specifications (TS) Safety Limit 2.1.1, "Reactor Core" and 2.1.2, "Reactor Trip System Instrumentation Setpoints" to decrease the minimum measured reactor coolant system (RCS) flow required for operation. TS 3.2.5, "Reactor Coolant System Total Flow Rate," would also be changed to reflect the new value. These changes are required due to extensive plugging and sleeving of the Unit 1 steam generator tubes anticipated during the Cycle 11 refueling outage.

Basis for proposed no significant hazards consideration determination: 10 CFR 50.91 states that a proposed amendment will not involve a significant hazards consideration if the proposed amendment does not:

- (i) Involve a significant increase in the probability or consequences of an accident previously evaluated; or
- (ii) Create the possibility of a new or different kind of accident from any accident previously evaluated; or
- (iii) Involve a significant reduction in a margin of safety.

The licensee provided an analysis that addressed the above three standards in the amendment application:

Criterion 1: Given the change, the thermal design flow which is assumed in NSSS design and non-ITDP UFSAR Chapter 14 analyses will still be met. Existing departure from nucleate boiling margin has been allocated to offset the change in minimum measured flow in the remaining UFSAR Chapter 14 analyses. Thus, the change is not expected to involve a

significant increase in the probability or consequences of a previously analyzed accident.

Criterion 2: The change will not change the design or operation of the plant. Thus, it would not be expected to create the possibility of a new or different kind of accident from any accident previously analyzed or evaluated.

Criterion 3: The original thermal design flow analyses assumptions for NSSS design and non-ITDP UFSAR Chapter 14 analyses will be met, and existing departure from nucleate boiling margin has been allocated for ITDP UFSAR Chapter 14 analyses. Thus, the subject evaluation have been demonstrated to comply with the licensing basis of the plant and in fact, involve no reduction in previously reported analysis results. Therefore, although the change may be construed as involving a reduction in the margin of safety, this will not be significant from a safety or licensing viewpoint.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and the above discussions, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room
location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Robert Pierson.

Long Island Lighting Company, Docket No. 50-322, Shoreham Nuclear Power Station, Unit 1, Suffolk County, New York

Date of amendment request: July 20, 1990.

Description of amendment request: The licensee has requested that the fire protection requirements currently contained in the Shoreham Technical Specifications be removed, in accordance with NRC Generic Letter 88-12, dated August 2, 1988.

This proposed amendment (1) removes the requirements and bases for fire protection systems (i.e., fire detection instrumentation, fire suppression water systems, deluge systems, CO₂ systems, Halon systems, fire hose stations, yard fire hydrants and hydrant hose houses, and fire rated assemblies) from SNPS Technical Specifications (TS) and relocates them to the Shoreham Nuclear Power Station (SNPS) Fire Hazard Analysis Report (FHAR), (2) removes fire brigade staffing requirements from the TS and relocates them to the SNPS FHAR, (3) adds administrative controls to the TS that are consistent with those for other programs implemented by licensee

condition, and (4) relocates and adds clarifying information to the standard fire protection license condition within NPF-82.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The licensee has determined that the proposed change does not involve a significant hazards consideration for the Shoreham Nuclear Power Station, Unit 1, on the basis of the following analysis, which was provided in its submittal of July 20, 1990:

A. The proposed amendment does not involve a significant increase in the probability or consequence of an accident previously evaluated because the change does not affect the function or operation of any system or equipment. No changes to the requirements have been made. The change is administrative in nature and simply relocates the fire protection systems and fire brigade staffing requirements and associated Bases from the Technical Specifications and places them into the Fire Hazard Analysis Report without altering them. The incorporation of new administrative controls into the Technical Specifications do not affect plant operation. The review of the Fire Protection Program and its revisions will be the responsibility of the Review of Operations Committee (ROC) just as it has always been the responsibility of this group to review fire protection requirements when they were part of the Technical Specifications.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed change is administrative in nature and does not alter the requirements. No physical alterations of plant configuration or changes to setpoints or operating parameters are proposed. The change does not affect the function or operation of any system or equipment. Station Procedures will continue to provide the specific instructions for implementing the license condition, action and surveillance requirements. There has been no reduction in commitments.

C. The proposed amendment does not involve a significant reduction in a margin of safety because no change is being proposed for the requirements themselves and the proposed change does not increase risk of radiological exposure to the offsite general

public. The procedural details covered in the Technical Specifications, consisting of the limiting conditions for operation, their remedial actions, surveillance, and fire brigade staffing requirements and the Bases section of the Technical Specifications for these requirements, have been relocated to the Fire Hazard Analysis Report without change in substance and in a manner that ensures that these details continue to be incorporated in plant operating procedures. Fire Protection Program commitments, reporting requirements and amendments will by this process be transferred from the jurisdiction of 10 CFR 50.73 and 10 CFR 50.90 to 10 CFR 50.59 and 10 CFR 50.71(e).

The staff has reviewed the licensee's submittal and significant hazards analysis and concurs with the licensee's determination as to whether the proposed determination involves a no significant hazards consideration. Therefore, the staff proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room
location: Shoreham-Wading River Public Library, Route 25A, Shoreham, New York 11786-9697.

Attorney for licensee: W. Taylor Reveley, III, Esq., Hunton and Williams, P.O. Box 1535, Richmond, Virginia 23212.

NRC Project Director: Walter R. Butler.

Northern States Power Company,
Docket No. 50-263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of amendment request: July 31, 1990.

Description of amendment request: The proposed amendment would revise the Technical Specifications. The limiting condition for operation (LCO) specification for minimum emergency diesel generator fuel supply would be changed from 26,250 gallons to 32,500 gallons. The amendment would also clarify that 2500KW is full load for a diesel generator when computing the seven day fuel requirement.

The emergency diesel generator fuel supply is stored in two day tanks of 1500 gallons capacity each, and a 60,000 gallon diesel generator storage tank. The storage tank is buried about 15 feet underground and has high, low and low-low level alarm switches set at 55,050 gallons, 40,330 gallons, and 35,575 gallons respectively.

Basis for proposed no significant hazards consideration determination: 10 CFR 50.92 states that a proposed amendment does not involve a significant hazards consideration if it does not: (1) Involve a significant increase in the probability or consequences of an accident previously

evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

Probability or consequences of an accident previously evaluated: The change to the Technical Specifications will not involve any changes to the physical design of the facility or its operating procedures. Any increase in the actual amount of diesel fuel stored in the storage tank as a result of this amendment is within the existing capacity of the tank and is consistent with existing procedures. The amendment would therefore not affect the probability or consequences of an accident.

The possibility of a new or different kind of accident from any accident previously evaluated: Regulatory Guide 1.70—Chapter 15 identifies the kinds of accidents to be postulated for boiling water reactors. The consequences of these accidents, for Monticello, are analyzed in Chapter 14 of the USAR and would not be changed as a result of the proposed amendment. Neither the licensee or the staff has postulated any new or different kinds of accidents which could result from the proposed amendment. The proposed amendment would thus not create the possibility of a new or different kind of accident from any accident previously evaluated.

Margin of safety: The proposed amendment does not modify any of the design criteria (e.g., codes and standards, safety limits, test acceptance criteria, or minimum performance standards associated with the design or operation of the facility. There would therefore be no reduction in any safety margin.

Using the standards of 10 CFR 50.92, the staff has made a proposed determination that no significant hazards considerations exist.

Local Public Document Room
location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Robert C. Pierson.

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: June 28, 1990 as supplemented August 2, 1990.

Description of amendment request: The original Fort Calhoun design designated classifications "Class 151R"

and "Class 301R" as piping pressure for piping systems. Only Class 301R pressure class piping is in service for shutdown cooling, and the Class 151R piping is isolated from the process stream by the low pressure safety injection pumps' suction isolation valves. However, using a containment spray pump for shutdown cooling places Class 151R piping in service. A recent licensee's engineering review revealed that the Class 151R piping system was not constructed or analyzed for unrestricted use in shutdown cooling service. The proposed amendment to the Technical Specifications (TSs) is to place limitation on when containment spray pumps may be considered available for shutdown cooling service. The changes are being incorporated in TSs 2.1.1(3) and 2.1.1(4). Also, a paragraph is being incorporated to the Basis section for explaining the restriction for the containment spray pump.

In addition, the title for TS 3.16 is being changed from Recirculation Heat Removal System to Residual Heat Removal (RHR) System to be consistent with nomenclature presently used in the industry. Also, TS 3.16 specifies the surveillance tests that are done to assure operability of the piping system for both pressure and leakage. The pressure test is to confirm the integrity of the safety injection (SI)/containment spray (CS) suction piping. The safety injection consists of the low pressure safety injection (LPSI) and the high pressure safety injection (HPSI) systems. The external leakage tests are performed to verify that external leakage to atmosphere is within a value which forms the basis of an assumption in the control room habitability analysis.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee provided an analysis that addressed the above three standards in the amendment application as follows:

(1) Will the change involve a significant increase in the probability or consequences of an accident previously analyzed?

When Technical Specifications 2.1.1(3), 2.1.1(4), and 3.16 apply, the plant is already in a shutdown condition. Of the analyzed accidents requiring the safety functions of the SI and/or CS systems, the only one analyzed by the USAR during plant shutdown is a LOCA.

The added restrictions in sections 2.1.1(3) and 2.1.1(4) do not increase the likelihood of an initiating event for a LOCA during shutdown. The minimum number of pumps required to be operable during shutdown is not being reduced, so the consequences of a LOCA during shutdown are also not increased by this change.

The proposed revision to section 3.16 ensures that proper RHR system piping pressure tests are performed to confirm that external leakage to atmosphere is within acceptable limits. The 1243 cc/hour external leakage limit to atmosphere (which is not being changed) forms the basis of RHR system post-accident external leakage to atmosphere used in the control room habitability analysis. (Per SRP 15.6.5 (Rev. 1, July 1981) guidelines, the control room habitability analysis assumes post-accident RHR leakage two times the Technical Specification limit.) The amended version of section 3.16 provides verification that the RHR external leakage to atmosphere is within a value which forms the basis of an assumption in the control room habitability analysis. This does not increase the probability or consequences of a previously analyzed accident.

The clarification of the 250 psig pressure test boundary in section 3.16(1)a ensures that the containment spray pumps' discharge piping is subjected to proper test pressure, while maintaining pressure within the rating of the CS pumps' suction piping downstream of the section isolation valves. The test provisions of this section, as amended, will not increase the likelihood of a LOCA during shutdown. The test boundary change has no impact on the consequences of this accident.

The proposed minimum test pressure for section 3.16(1)b provides an adequate overpressure margin to confirm the integrity of the SI/CS pumps' suction piping. The redefinition of the test boundary only eliminates redundant testing of LPSI and CS pumps' suction piping, which is already tested by section 3.16(1)a. Neither of these changes increase the likelihood of an initiating event for a LOCA during shutdown, nor do they have any impact on the consequences of such an event.

The proposed additional HPSI discharge piping test in section 3.16(1)c adequately confirms the integrity of this piping, while staying within the pressure ratings of the components. The new test provision does not require operating the HPSI system in a manner inconsistent with its design basis. The new test provisions of section 3.16(1)c do not increase the likelihood of an initiating event for a LOCA during shutdown, nor do they have any impact on the consequences of such an event.

(2) Will the change create the possibility of a new or different kind of accident from any previously analyzed?

2.1.1(3) and 2.1.1(4) proposed change:

The proposed limitations on containment spray pump availability for shutdown cooling service ensure that the piping system associated with this alternate shutdown cooling mode is not subjected to an unanalyzed condition. By avoiding an unanalyzed condition, the possibility of creating a new or different kind of accident from any previously analyzed is also avoided.

3.16 proposed change:

The clarification of the 250 psig pressure test boundary in section 3.16(1)a ensures that the containment spray pumps' discharge piping is subjected to the proper test pressure. As discussed in the Description of Amendment Request, the 250 psig test pressure is within the rating of the CS pumps' suction piping downstream of the suction isolation valves. This redefinition of test boundary does not create an initiating event for a new or different type of accident from any previously analyzed. The proposed minimum test pressure for section 3.16(1)b provides an adequate overpressure margin to confirm the integrity of the SI/CS pumps' suction piping. The redefinition of test boundary for this section only eliminates redundant testing of LPSI and CS pumps' suction piping already tested in section 3.16(1)a. Neither of these changes create the possibility for an initiating event for a new or different type of accident from any previously analyzed.

The proposed additional HPSI discharge piping test in section 3.16(1)c adequately confirms the integrity of this piping, which meets the intent of the specification. No design limits are exceeded during this test, and it does not involve a system alignment which is inconsistent with the design basis of the system. The additional test provisions in section 3.16(1)c do not create the possibility of a new or different kind of accident from any previously analyzed.

(3) Will the change involve a significant reduction in the margin of safety?

2.1.1(3) and 2.1.1(4) proposed change:

The containment spray pumps are not required to function as shutdown cooling pump in either a primary or backup capacity by the Fort Calhoun Updated Safety Analysis Report (USAR) or the basis section of Technical Specification 2.1.1. The CS pumps were originally included in sections 2.1.1(3) and 2.1.1(4) for operational flexibility and maintenance convenience reasons, not because of any design basis requirement. The proposed restrictions on availability of the CS pumps for shutdown cooling service therefore may result in a reduction in the level of operational flexibility or maintenance convenience. However, this does not constitute a reduction in the margin of safety as defined by the Fort Calhoun USAR or the basis for Technical Specification 2.1.1.

3.16 proposed change:

The clarification of the 250 psig pressure test boundary in section 3.16(1)a ensures that the containment spray pumps' discharge piping is subjected to the proper test pressure. As discussed in the Description of Amendment Request, the 250 psig test pressure is within the rating of the CS pumps' suction piping downstream of the suction

isolation valves. This redefinition of the 250 psig test boundary will not reduce the margin of safety.

In view of the 66 psig design pressure of the class 151R SI/CS pumps' suction piping, there is not a significant additional margin of safety associated with a 100 psig (present) versus an 82 psig (proposed) minimum test pressure for section 3.16(1)b. The proposed revision of the test pressure therefore does not involve a significant reduction in the margin of safety. The redefinition of the section 3.16(1)b test boundary testing of LPSI and CS pump section piping already tested to a higher pressure in section 3.16(1)a.

As discussed in the Description of Amendment Request, the proposed additional HPSI discharge piping test in section 3.16(1)c adequately confirms the integrity of this piping, which meets the intent of the specification. No design limits are exceeded during this test. This is an additional test requirement not previously provided in the Technical Specifications. Therefore, the additional proposed HPSI piping test does not constitute a reduction in the margin of safety.

The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the proposed amendment involves no hazards consideration.

Local Public Document Room

location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Attorney for licensee: LeBoeuf, Lamb, Leiby, and MacRae, 1333 New Hampshire Avenue, NW., Washington, DC 20036.

NRC Project Director: Theodore R. Quay.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego, New York

Date of amendment request: June 11, 1990.

Description of amendment request: The proposed amendment would delete the reference to Regulatory Guide 1.129 in Surveillance Requirements 4.9.E, "Station Batteries," and 4.9.F, "LPCI MOV Independent Power Supplies." Rather than referencing Regulatory Guide 1.129, these proposed changes would result in the specification stating that it is the battery service (also called a "duty cycle") test that is performed at intervals not to exceed eighteen months, and that it is the performance discharge (also called a "capacity") test that is performed at intervals not to exceed five years. The effect of these proposed changes is to incorporate consistent terminology, to reflect actual plant practices, and to incorporate the

Institute of Electrical and Electronics Engineers (IEEE) 450-1987 standard. The result is application of an equalizing charge to the batteries prior to conducting a performance discharge (capacity) test, but not prior to a battery service (duty cycle) test. In addition, the proposed change to the Bases section would indicate that the tests are conducted in accordance with the IEEE 450-1987 standard. These changes are proposed in response to a commitment resulting from a recent Safety System Functional Inspection conducted by the NRC.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92.

The licensee has evaluated the proposed amendment against the standards provided above and has supplied the following information:

Operation of the James A. FitzPatrick Nuclear Power Plant in accordance with this proposed amendment would not involve a significant hazards consideration, as defined in 10 CFR 50.92, since the proposed changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes delete the references to Regulatory Guide 1.129 in Surveillance Requirements 4.9.E, "Station Batteries," and 4.9.F, "LPCI MOV Independent Power Supplies." Surveillance Requirements 4.9.E and 4.9.F require that performance discharge (capacity) tests and service (duty cycle) tests be performed on the station batteries and the LPCI MOV independent power supply batteries in accordance with Regulatory Guide 1.129. Regulatory Guide 1.129 endorses IEEE 450-1975 which does not allow an equalizing charge to be given to the batteries before conducting these tests. These proposed changes, which are in accordance with current industry standards (i.e., IEEE 450-1987), allow an equalizing charge to be applied to the batteries prior to performing the 5-year battery performance discharge (capacity) test. In addition, the Bases section has been revised to state that these tests are being performed in accordance with the recommendations of IEEE 450.

The safety objective of the 125 V DC Power System is to provide independent sources of 125 V DC power to all DC loads for normal operating conditions and for safe shutdown of the plant following abnormal operational transients and postulated accidents. The safety objective of the LPCI MOV independent power supply system is to provide an independent power source for the operation of required motor operated valves in the Low Pressure Coolant Injection System and the reactor water recirculation loops during a loss of offsite power coincident with a design basis LOCA. These safety objectives are not affected by the proposed technical specification changes. The changes do not

alter the conclusions of the plant's accident analyses as documented in the FSAR or the NRC staff's SER.

2. Create the possibility of a new or different kind of accident from those previously evaluated. The proposed TS changes will result in reflecting actual and desired plant testing conditions, as well as incorporation of the industry standard (IEEE 450-1987). The proposed changes will result in more accurate and consistent testing methods and determination of the standby condition of the batteries. No changes to existing plant systems, components, or equipment results from the proposed change.

3. Involve a significant reduction in the margin of safety. The proposed change does not involve modifications to existing equipment, components, or systems. The testing methods being used, and which are addressed in the proposed TS change, result in a more accurate determination of the condition of the main station and the LPCI independent power supply batteries and are in agreement with the approved industry standard.

The staff has reviewed and agrees with the licensee's analysis of the significant hazards consideration determination. Based on the review and the above discussion, the staff proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room location: State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019.

NRC Project Director: Robert A. Capra.

Sacramento Municipal Utility District, Docket No. 50-312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of amendment request: April 26, 1990, as supplemented July 12, 1990.

Description of amendment request: The Sacramento Municipal Utility District (SMUD, The District) has decided to permanently cease operations at the Rancho Seco Nuclear Generating Station. The Rancho Seco reactor has been defueled and the reactor fuel is currently stored in the on-site spent fuel pool. The proposed amendment would modify the license to a possess-but-not-operated status ("possession only license"). This proposed amendment would allow SMUD to possess special nuclear material, but not operate the nuclear reactor by removing the authority to operate.

Additionally, in support of this amendment request, SMUD submitted a Plan for Ultimate Disposition of the

Facility on July 12, 1990 that provides a status report on SMUD's preliminary planning for decommissioning the Rancho Seco Nuclear Generating Station.

Injection System and the reactor water recirculation loops during a loss of offsite power coincident with a design basis LOCA.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee provided an analysis that addressed the above three standards in the amendment application.

This Proposed Amendment to the Facility Operating License prohibits operation of the Rancho Seco reactor at any power level. The District has no intention of taking the reactor critical again. Existing analyses address potential accident scenarios from a reactor shutdown condition through power operation. Maintaining the fuel subcritical results in an increase in margins of safety from an accident analysis standpoint. No new accidents or failure modes are created by maintaining the reactor in the defueled mode.

The District has reviewed this Proposed Amendment against each of the criteria of 10 CFR 50.92 and concludes that this amendment would not:

- involve a significant increase in the probability or consequences of an accident previously evaluated since it imposes additional operation restrictions while not modifying the present plant protection systems and controls necessary to preserve and protect the integrity of the spent fuel and spent fuel pool; or
- create the possibility of a new or different kind of accident from any accident previously evaluated since it does not modify the facility or permit activities of a different kind than those that are presently allowed; or
- involve a significant reduction in a margin of safety since it allows no new activities, and adds additional conservative restrictions on plant operations.

Therefore, the District concludes that Proposed Amendment... involves no significant hazards consideration.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the

licensee's analysis. Therefore, the staff proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room
location: Martin Luther King Regional Library, 7340 24th Street Bypass, Sacramento, California 95882.

Attorney for licensee: Jan Schori, Sacramento Municipal Utility District, 6201 S Street, P.O. Box 15830, Sacramento, California 95813.

NRC Acting Project Director: John Larkins.

Tennessee Valley Authority, Docket No. 50-260, Browns Ferry Nuclear Plant, Unit 2, Limestone County, Alabama

Date of amendment requests: June 8, 1990 (TS 285).

Description of amendment requests: The Tennessee Valley Authority (TVA), with support from the General Electric Company, conducted an extended load line limit analysis (ELLLA) of the Browns Ferry Nuclear (BFN) Plant, Unit 2, for Cycle 6. As a result of this analysis, TVA proposed to amend the BFN, Unit 2, Technical Specifications (TS) to allow for expanded reactor operation in a region of higher core power versus core flow. More specifically, TVA proposed to revise—(1) Limiting Safety System Settings (LSSS) of Sections 2.1.A.1.a and c by prescribing different equations for the flow-biased Average Power Range Monitor (APRM) scram and rod block setpoints, (2) Figures 2.1-1 and 2.1-2 to indicate the revised flow-biased scram and rod block lines, (3) Bases of TS Section 2.1 as appropriate, (4) Table 3.2.C to specify the revised APRM upscale trip level setting, and (5) Limiting Condition for Operation (LCO) 3.5.L.1 to correct a typographical error and specify new equations for the APRM flow-biased scram and rod block setpoints.

Basis for proposed no significant hazards consideration determination: The Commission has established regulatory standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards 10 CFR 50.92 on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, TVA has provided the following analysis:

1. The proposed change does not involve a significant increase in the probability or consequences of accident[s] previously evaluated.

The proposed change will expand the operating domain to allow operation in a region of higher core power versus core flow up to rated power conditions. The extended load line limit analyses (ELLLA) considered the effects of the change on previously evaluated accidents. The ELLLA showed that the results of these events meet the limiting safety design criteria. Furthermore, the proposed change will not affect the operability of safety-related equipment necessary to mitigate the effects of design basis accidents. Therefore, the change will not significantly increase the probability or consequences of accidents previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not require the addition of any new equipment to the plant design or require any existing equipment to operate in a different manner from which it was designed to operate. The plant operating domain is being expanded slightly by changing the APRM flow-biased rod block and scram setpoints. However, the plant design basis, 105% steam flow at 100% core flow, is not changed.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change does not affect the ability of the plant safety related trips or equipment to perform their intended functions. Although the flow-biased APRM scram setpoint is being slightly increased, no credit for this scram is considered in the licensing basis or the ELLLA. The APRM flow-biased scram serves as an additional scram over and above those required to maintain the margin of safety.

The staff has reviewed the licensee's amendment application and analysis of no significant hazards consideration and concurs with the licensee's conclusions. Therefore, the staff proposes to determine that TVA's application for amendments does not involve significant hazards considerations.

Local Public Document Room
location: Athens Public Library, South Street, Athens, Alabama 35611.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Project Director: Frederick J. Hebden.

Tennessee Valley Authority, Docket No. 50-260, Browns Ferry Nuclear Plant, Unit 2, Limestone County, Alabama
Date of amendment request: July 3, 1990 (TS 284).

Description of amendment request: The Browns Ferry Nuclear (BFN) Plant, Unit 2, Technical Specifications (TS) are being revised as follows:

1. Table 3.7.A, "Primary Containment Isolation Valves," is being revised to include the Post-Accident Sampling System (PASS) liquid and gas return to torus valves (FSV-43-40 and FSV-43-42) and the PASS Residual

Heat Removal liquid sample valves (FSV-43-50 and FSV-43-56).

2. Table 3.7.A, "Primary Containment Isolation Valves," is being revised to include the Drywell Control Air (DCA) System inlet header check valves (32-2516 and 32-2521) and the Containment Atmospheric Dilution (CAD) cross tie to DCA check valve (84-680).

3. Section 6.0, "Administrative Controls," is being revised to add a new specification, 6.8.5, which requires BFN [to] establish, implement and maintain the capability to obtain and analyze reactor coolant, radioactive iodines and particulates in plant gaseous effluents, and containment atmosphere samples under accident conditions. The activities associated with this capability shall include (1) training of personnel, (2) procedures for sampling and analysis, and (3) provisions for maintenance of sampling and analysis.

Basis for proposed no significant hazards consideration determination:

The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis:

1. The proposed change does not significantly increase the probability or consequences of an accident previously evaluated.

The PASS containment isolation valves satisfy the design criteria for BFN containment isolation valves. This modification does not significantly affect the ability of the containment to perform its ultimate safety objective, which is to assure containment integrity and maintain post-design basis accident fission product releases below 10 CFR 100 limits. These containment isolation valves will be provided with automatic isolation signals from the Primary Containment Isolation System. These valves are powered from Class 1E power supplies.

The addition of the PASS containment isolation valves by this proposed amendment does not eliminate or modify any requirement or commitment to comply with the provisions of 10 CFR 50, Appendix J. The operation of these containment isolation valves or the failure of any single valve to operate does not affect the Final Safety Analysis Report (FSAR) analysis of design basis accidents. Therefore, the addition of these valves does not significantly increase the probability or consequences of an accident previously evaluated.

The DCA and CAD containment isolation valves satisfy the design criteria for BFN containment isolation valves. This modification does not significantly affect the ability of the containment to perform its ultimate safety objective, which is to assure containment integrity and maintain post-

design basis accident fission product releases below 10 CFR 100 limits. These containment isolation valves are check valves and will automatically perform their isolation function if backflow through these lines is sensed. This arrangement is identical to the existing CAD/DCA line into the drywell.

The addition of the DCA and CAD containment isolation valves by this proposed amendment does not eliminate or modify any requirement or commitment to comply with the provisions of 10 CFR 50, Appendix J. The operation of these containment isolation valves or the failure of any single valve to operate does not affect the Final Safety Analysis Report (FSAR) analysis of design bases accidents. Therefore, the addition of these valves does not significantly increase the probability or consequences of an accident previously evaluated.

The purpose of requiring the ADS valves [to] be operable for 100 days following an accident is to provide the operators with the ability to manually decrease the pressure of the primary system. The addition of a redundant supply line to the ADS accumulators will aid in mitigation of the consequences of an accident by enhancing the reliability of ADS operation.

The purpose of the PASS is to perform radiological and chemical analyses of reactor coolant and containment atmosphere samples after a design basis accident has occurred. Otherwise, the PASS is only operated for short periods of time to support training and calibration activities. The operation of the PASS or the failure of the PASS to operate does not affect the Final Safety Analysis Report (FSAR) analysis of design bases accidents. Therefore, the addition of an administrative requirement to establish and maintain a post-accident sampling capability does not involve a significant increase in the probability or consequences of an accident previously evaluated. This sampling and analytical capability will aid in mitigation of the consequences of an accident by providing timely information to operating personnel on certain plant parameters.

2. This proposed change does not create the possibility of a new or different kind of accident from an accident previously evaluated.

The addition of four PASS primary containment isolation valves and the three primary containment isolation valves associated with the redundant nitrogen supply line to the ADS accumulators by this proposed amendment does not eliminate or modify any requirement or commitment to comply with the provisions of 10 CFR 50, Appendix J, or BFN Technical Specification 3/4.7.A. These additional containment isolation valves satisfy the design criteria for the containment isolation valves for BFN systems which penetrate primary containment and are of comparable size and configuration. The addition of this equipment will not require any existing equipment to operate in a different manner from which it was designed to operate. The operation of these containment isolation valves or the failure of any single valve to operate does not affect the Final Safety Analysis Report (FSAR) analysis of design bases accidents.

No operation outside the plant design basis is introduced, so there is no possibility for creation of a new or different kind of accident from any previously evaluated.

The addition of a requirement to establish and maintain a post-accident sampling capability is administrative and does not add any new equipment to the plant or require any existing equipment to be operated in a different manner from which it was designed to operate. Therefore, there is no effect on the Final Safety Analysis Report (FSAR) analysis of design bases accidents. No operation outside the plant design basis is introduced, so there is no possibility for creation of a new or different kind of accident from any previously evaluated.

3. This proposed change does not involve a significant reduction in a margin of safety.

The addition of four PASS primary containment isolation valves and the three primary containment isolation valves associated with the redundant nitrogen supply line to the ADS accumulators by this proposed amendment is consistent with the existing BFN Safety Analysis. No adverse safety impact or significant reduction in safety margins occur due to the addition of these valves. The changes do not significantly affect the ability of the containment to perform its ultimate safety objective to assure containment integrity and maintain post-design basis accident fission product releases below 10 CFR 100 limits. BFN commitments to comply with the provisions of 10 CFR 50, Appendix J, and BFN Technical Specification 3/4.7.A are not altered. Therefore, this proposed change does not involve a significant reduction in a margin of safety.

The addition of a requirement to establish and maintain a post-accident sampling capability is administrative. No adverse safety impact or reduction in safety margins occur due to this change. This change does not physically modify any equipment, setpoints, or initiation sequence of equipment. Therefore, this proposed change does not involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's amendment application and analysis of no significant hazards consideration and concurs with the licensee's conclusions. Therefore, the staff proposes to determine that this application for amendment does not involve significant hazards considerations.

Local Public Document Room
location: Athens Public Library, South Street, Athens, Alabama 35611.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Project Director: Frederick J. Hebdon.

Tennessee Valley Authority, Docket No. 260, Browns Ferry Nuclear Plant, Unit 2, Limestone County, Alabama

Date of amendment request: July 6, 1990 (TS 281).

Description of amendment request: The Browns Ferry Nuclear (BFN) Plant,

Unit 2, Technical Specifications (TSs) are being revised as follows:

1. Revise the remarks for the function "Instrument Channel—Reactor Low Water Level" to reflect new names for the Automatic Depressurization System (ADS) timers. The amount of time delay is no longer in the name.
2. Revise the remark for the function "Instrument Channel—Drywell High Pressure" to reflect that the 105 second delay timer is now called the ADS timer.
3. Revise the ADS timer entries in Table 3.2.b to reflect the new time delay names and the range of allowable values for each timer.
4. Revise the ADS timer entries in Table 4.2.b to reflect the new time delay names.
5. Revise Bases Section 3.2 to reflect the new ADS time delay names and to be in agreement with changes 1 through 4 above.
6. Revise Limiting Condition for Operation (LCO) 3.5.G.1 (ADS) to require six ADS valves to be operable prior to startup.
7. Revise LCOs 3.5.G.2 and 3.5.G.3 to be consistent with the Boiling Water Reactor (BWR) Standard TSs (NUREG-0123).
8. Revise Bases Section 3.5.G (ADS) to reflect the LCO changes and to more accurately reflect system characteristics.

Basis for proposed no significant hazards consideration determination:
The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis:

1. The proposed change does not involve a significant increase in the probability or consequences of accident previously evaluated.

Changes 1 through 5 above are the result of a revision to the settings for the ADS initiation timers and the ADS high drywell pressure bypass timers. The new settings are the result of a bounding reanalysis for the ADS high drywell pressure bypass timer function based on replacement of the Yarway columns for the water level instruments for Unit 2 with instrumentation located outside the drywell. This eliminated the bias of the reactor low level setpoint for ADS, low pressure coolant injection (LPCI) and core spray (CS) initiation assumed in the previous analysis. Also, the ADS initiation timer has a higher uncertainty than used in the original calculation.

These TS changes do not involve any changes to the plant except the ADS initiation and ADS high drywell pressure bypass timer settings. They will ensure that the ADS automatically initiates for events in which reactor vessel water level cannot be maintained. The ADS initiation will occur soon enough to ensure that the peak cladding

temperature (PCT) does not exceed the applicable limits (i.e., 2000 °F for events causing high drywell pressure. The large stresses on the reactor vessel caused by a rapid depressurization were included in the design of the reactor vessel and these stresses will not be increased by the proposed changes. The changes will allow the operator sufficient time to determine the necessity of an ADS initiation and to prevent unnecessary ADS initiations by resetting the ADS initiation timer or utilizing the manual inhibit switch.

Changes 6 through 8 increase the requirement for operable ADS valves prior to startup to six valves from the current four and revise LCOs 3.5.G.2 and 3.5.G.3 for inoperable ADS valves so they are similar to the BWR Standard TSs.

Conservatively increasing the number of ADS valves required to be operable prior to startup ensures that sufficient capacity exists to reduce reactor vessel pressure to within the operating range of the low pressure injection systems, even with two ADS valves made inoperable by the loss of a reactor MOV board.

The proposed changes to LCOs 3.5.G.2 and 3.5.G.3 will ensure that adequate capability exists to prevent the PCT from being exceeded in an accident even if sufficient [all] ADS valves are not operable (i.e., HPCI [High Pressure Coolant Injection], core spray, and LPCI are required to be operable). If more than one ADS valve is inoperable, continued operation is not allowed.

The only design basis accident described in chapter 14 of the Final Safety Analysis Report which is affected by this change is the main steam line break outside of secondary containment. These technical specification changes will revise the ADS initiation timer and ADS high drywell pressure bypass timer settings to ensure depressurization early enough so the low pressure injection systems can operate to maintain the PCT below 1500 °F. The change to require six ADS valves operable will conservatively ensure that an adequate ADS capacity exists. Therefore, these changes will not increase the probability or consequences of this accident.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The ADS provides for automatic depressurization of the nuclear system as needed to allow operation of LPCI and CS systems to protect the fuel barrier from overheating. The ADS uses six of the thirteen nuclear system pressure relief valves to relieve high pressure steam from the reactor vessel to the suppression pool. For a large line break of the primary system, operation of the ADS would not be required since the large break would result in rapid depressurization of the primary system.

However, for smaller line breaks in which the primary system does not depressurize quickly and the high pressure coolant systems cannot maintain reactor vessel level greater than 378 inches above vessel zero (AVZ), the ADS operates to reduce the reactor vessel pressure to within the discharge head of the LPCI and CS systems. By performing this function, the ADS in conjunction with LPCI and/or CS acts as a backup to the HPCI system, thus

ensuring core cooling when the HPCI system is not available.

Initiation signals received by the ADS logic and the operation of plant systems following ADS initiation are not affected by this change. The TS change will result in earlier initiation of ADS which will ensure adequate core cooling when ADS is required to operate. The change will also require two additional ADS valves to be operable prior to startup. This will ensure that at least four ADS valves are available to mitigate an accident as required by the analysis even with two valves made inoperable by the loss of a reactor MOV board. No new or different kind of accident is introduced by requiring more valves or shortening the initiation times.

3. The proposed change does not involve a significant reduction in a margin of safety.

The analysis performed by General Electric for the original installation of the ADS high drywell pressure bypass timers evaluated the PCT after the bypass timer timed out, the ADS timer timed out (120 seconds), the ADS valves opened, and the low pressure cooling systems operated. The analysis predicted that the maximum PCT would be 1424 °F.

The bounding reanalysis performed by GE utilized data from the previous BFN analysis and data from similar plants. It took into account differences between the original calculation assumptions and actual plant configuration and operation. This bounding analysis concluded that for an ADS high drywell pressure bypass timer analytical limit of 360 seconds, the PCT will not exceed 1500 °F. This is not significantly different from the PCT of 1424 °F which was previously calculated for the original installation of the bypass timers as required by NUREG-0737, Item II.K.3.18.

The change to require six ADS valves to be operable prior to startup will increase the margin of safety over the present requirement of four operable ADS valves. This will ensure that even if a failure of a reactor MOV board occurs and makes two ADS valves inoperable, four valves will still be operable. An analysis has shown that four ADS valves are capable of depressurizing the reactor rapidly enough to maintain a PCT of 1500 °F.

The staff has reviewed the licensee's TS amendment application and analysis of no significant hazards consideration and concurs with the licensee's conclusions. Therefore, the staff proposes to determine that the application for amendments do not involve significant hazards considerations.

Local Public Document Room
location: Athens Public Library, South Street, Athens, Alabama 35611.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Project Director: Frederick J. Hebdon.

Tennessee Valley Authority, Docket No. 50-260, Browns Ferry Nuclear Plant, Unit 2, Limestone County, Alabama

Date of amendment request: July 13, 1990 (TS 290).

Description of amendment request: The Browns Ferry Nuclear (BFN) Plant, Unit 2, Technical Specifications (TS) for the high temperature isolation setpoint of the High Pressure Coolant Injection (HPCI) and Reactor Core Isolation Cooling (RCIC) Systems are being revised as a consequence of the results from computer modeling analyses of high energy line breaks (HELBs) conducted by the Tennessee Valley Authority (TVA). These results indicated that certain HPCI and RCIC System HELB scenarios might not generate sufficiently high temperatures to actuate primary isolation. Therefore, current TS Table 3.2.B will be revised to incorporate new, more conservative, allowable setpoint values for the HPCI and RCIC steam line space instrument channels. Additionally, both TS Tables 3.2.B and 4.2.B will indicate the specific areas (torus and pump rooms) where temperatures are being monitored. A new note 1.E, regarding operability requirements, will be added to Table 3.2.B and existing note 4 is being deleted. And, the Bases for TS Section 3.2 would be changed for consistency.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in § 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The HPCI and RCIC steam line space high temperature isolations are provided to ensure automatic closure of each system's primary containment isolation valves for a HPCI or RCIC steam line break. The isolation occurs when a very small leak has occurred. If the small leak is allowed to continue without isolation, offsite dose limits may be reached. TVA has utilized computer modeling techniques to predict the temperature response of various reactor building zones to high energy line breaks. The results indicate that temperatures below the present 200 °F technical specification value may be present for various HPCI and RCIC line break scenarios. The proposed change is being

made so that HPCI and RCIC steam line breaks will be detected and isolated at the same or lower area temperatures.

The change to the allowable values of temperature in Table 3.2.B is in a conservative direction and provides the same or earlier detection and isolation of HPCI and RCIC steam line breaks. A new note 1.E is added to Table 3.2.B and referenced for the HPCI and RCIC high temperature instrument channels which requires an inoperable channel to be tripped. Both Tables 3.2.B and 4.2.B are revised to differentiate between temperature monitoring areas with different allowable values. Changes to the bases are being made so it is consistent with the tables. The changes have no effect on the probability of an accident and they will reduce the consequences of an accident through the same or earlier detection and isolation.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change to the HPCI/RCIC steam line space high temperature isolations does not involve any modification to plant equipment. No new failure modes are introduced. There is no effect on the function or operation of any other plant system. No new system interactions have been introduced by the change. The results of a break in the HPCI or RCIC steam lines remain as before. The HPCI or RCIC steam line area temperature switches will still detect a break due to an increase in area temperatures and close the system primary containment isolation valves to prevent reactor coolant loss. The proposed change will conservatively serve to detect and mitigate HPCI and RCIC line breaks more expeditiously.

3. The proposed change does not involve a significant reduction in a margin of safety.

The margin of safety will be enhanced by ensuring that HPCI and RCIC steam line breaks are isolated at the same or lower steam line area temperatures. Computer modeling techniques were utilized to predict the temperature response in various areas through which the HPCI and RCIC steam lines pass. The setpoints are established above the maximum expected room temperatures to avoid spurious actions due to ambient conditions and below the analytical limits to ensure timely pipe break detection and isolation. The design and function of the affected components has not been changed.

The staff has reviewed the licensee's amendment application and analysis of no significant hazards consideration and concurs with the licensee's conclusions. Therefore, the staff proposes to determine that TVA's application for amendment does not involve significant hazards considerations.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Project Director: Frederick J. Hebdon.

Tennessee Valley Authority, Docket No. 50-260, Browns Ferry Nuclear Plant, Unit 2, Limestone County, Alabama

Date of amendment request: August 6, 1990 (TS 291).

Description of amendment request: As part of its Nuclear Performance Plan for Browns Ferry Nuclear (BFN) Plant, Unit 2, the Tennessee Valley Authority (TVA) re-evaluated the calculations that support the technical basis for the setpoints and limits of those parameters that establish and bound safe shutdown of the plant. During this process, TVA determined that the Level 1 trip setpoint for Low Reactor Pressure Vessel (RPV) Water Level was not conservative. Consequently, TVA proposed to revise the BFN, Unit 2, TS to incorporate a more appropriate trip setpoint for the Level 1 Low RPV Water Level based upon a new analytical (safety) limit from General Electric (GE). In particular, TS Section 2.1.C, Tables 3.2.A, 3.2.B and 3.7.D, and the Bases for TS Sections 3.2 and 3.7/4.7 would be revised to specify a Limiting Safety System Setting (LSSS) and associated trip setpoint of 398 inches above vessel zero (AVZ) vice 378 inches AVZ. Also, the current Safety Limit of 378 inches AVZ specified in TS Section 1.1.C, and its Bases, would be changed to the new GE analytical limit of 372.5 AVZ. Furthermore, TVA proposed to delete the temporary TS amendment (amendment no. 158 approved December 15, 1988) regarding RPV water level monitoring instrumentation since the modifications that made this amendment necessary are complete.

Basis for proposed no significant hazards consideration determination: The Commission has established regulatory standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in 10 CFR 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, TVA has provided the following analysis:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

TVA committed in the Nuclear Performance Plan Volume III to ensure that calculations exist to support the safe shutdown basis of unit 2.

During the process of generating accuracy and setpoint calculations, a parameter (Level 1 low RPV water level) was determined to have a technical specification trip setting which did not agree with calculation results

and based on the new calculation methodology was not conservative.

The Level 1 low RPV water level instruments ensure that the core spray and low pressure coolant injection systems are initiated at a low reactor water level (greater than or equal to 398 inches) to mitigate a loss of coolant accident and isolate the main steam lines to prevent inventory loss.

No equipment changes are being made. The changes will not affect the probability or consequences of an accident previously evaluated. The actual trip setpoint will remain unchanged.

The design basis accident in chapter 14 of the Final Safety Analysis Report affected by this change is the loss of coolant accident. The change will ensure that the trip level setting for the Level 1 low RPV water level is properly established so that the analytical limit is not exceeded.

Temporary technical specification TS 261T allowed the automatic initiation capability of specific reactor low water level instruments to be inoperable during the time the reactor vessel water level monitoring system modification was being performed. Deletion of this temporary amendment is administrative in nature and will therefore not increase the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change to the Level 1 low RPV water level trip level setting does not involve any modification to plant equipment. No new failure modes are introduced and no new system interactions have been introduced. The results of a low reactor vessel water level remain as before. The same protective functions will still occur at the Level 1 low RPV water level.

The change to delete TS 261T is administrative in nature. No new or different kinds of accidents can be created by this change because it conservatively revises the technical specifications to delete an exception to the operability requirements for certain reactor low water level instruments.

3. The proposed change does not involve a significant reduction in a margin of safety.

The margin of safety will be increased by ensuring that the trip level setting for the Level 1 low RPV water level is sufficiently removed from the analytical limit so that the analytical limit is not exceeded. The trip level setting has been selected utilizing the methodology endorsed by Regulatory Guide 1.105 and provides a conservative assurance that the trip function will occur at or before the analytical limit. The new trip level setting is sufficiently removed from the normal operating range such that the incidence of spurious trips should not be increased. Neither the design nor function of the affected components has been changed.

The proposed change to delete TS 261T will remove an exception to the operability requirements for certain reactor low water level instruments that was needed during the reactor vessel water level monitoring system modification. The modification has been completed. This change will not reduce the

margin of safety but will actually increase requirements.

The staff has reviewed the licensee's amendment application and analysis of no significant hazards consideration and concurs with the licensee's conclusions. Therefore, the staff proposes to determine that TVA's application for amendments does not involve significant hazards considerations.

Local Public Document Room
location: Athens Public Library, South Street, Athens, Alabama 35611.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Project Director: Frederick J. Hebbon.

Tennessee Valley Authority, Docket Nos. 50-280 and 296, Browns Ferry Nuclear Plant, Units 2 and 3, Limestone County, Alabama

Date of amendment requests: July 13, 1990 (TS 283).

Description of amendment requests: The Technical Specifications (TS) of the Browns Ferry Nuclear (BFN) Plant, Units 2 and 3, would be changed to: (1) add TS section 3.9.D to require that whenever train C of the Standby Gas Treatment System (SGTS) and/or train B of the Control Room Emergency Ventilation System (CREVS) are required for Unit 2 operation, the associated Unit 3 emergency diesel generator (EDG) shall be operable. TS section 3.9.D would also specify that whenever one of these Unit 3 EDGs is inoperable, the associated train of SGTS or CREVS may still be considered operable for the purpose of satisfying the corresponding system TS for the succeeding 30 days, provided that redundant train(s) of SGTS and CREVS (and their normal and emergency power supplies) are operable; (2) add TS section 4.9.D to prescribe the surveillance requirements for Unit 3 EDGs required for Unit 2 operation with Unit 3 shutdown; (3) add TS section 4.9.C to clarify that additional surveillance is not required during operation in cold shutdown; and, (4) supplement the Bases for TS 3.9 with a paragraph to address the new requirements for Unit 3 EDGs. In addition, there are changes to the 3.9/4.9 Bases not related to the revised Unit 3 EDG requirements. Two sentences would be deleted from the Bases of TS section 4.9 which refer to the use of Unit 1 loads to assess the capability of Units 1 and 2 EDGs to accept emergency loads, also the Bases of Unit 2 TS Section 3.9 would be modified to reflect that 480 V shutdown boards are affected

by the loss of a 250 V shutdown board battery.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The safety objective of the standby power system is to provide a self-contained and highly reliable source of power to the required loads for the safe shutdown and cooldown of all three units in the event of a loss of offsite power and a loss of coolant accident in any one unit.

The safety functions of the Standby Diesel Generator System are not affected by this change to the Technical Specifications. There are no physical changes to the plant as a result of this revision. The Technical Specifications are being revised to provide LCO and surveillance requirements for equipment which is provided emergency power from Unit 3. The Unit 3 EDGs are already configured to supply emergency power to the mechanical systems associated with this technical specification change. The change will ensure that plant operators recognize the interdependency to Unit 3 EDGs and that surveillances of the Unit 3 EDGs are performed to assure continued operability and support of Unit 2 operation.

The Standby Gas Treatment System (SGTS) provides a means for minimizing the release of radioactive material from the containment to the environs by filtering and exhausting the air from the three Reactor Building areas and the common refueling area and maintaining the areas at a negative pressure during containment isolation conditions.

The ability to fulfill the safety functions of the SGTS is assured by this change to the Technical Specifications. By requiring Unit 3 EDG 3D be operable to support Unit 2 operation, emergency power is assured for the operation of train C of the SGTS.

Each train of the SGTS is supplied with emergency power from separate emergency power supplies to ensure that two trains are always available in case of loss of offsite power and the loss of any one train or EDG. The power supply for trains A and B is from the Units 1 and 2 EDGs A and D. Train C is powered by the Unit 3 EDG 3D.

Control logic for the SGTS automatically and concurrently starts all three 50% capacity filter trains upon receipt of an accident signal (low reactor water level, high drywell pressure or high activity in a ventilation exhaust duct). Should one train fail, the two

remaining trains will continue to provide the required flow.

Either of the two CREVS (100% capacity) trains is capable of supplying clean air to pressurize the control rooms under isolated conditions and thus provide protection from excessive concentrations of airborne activity.

The ability to meet the safety functions of the CREVS is assured by this change to the technical specifications. With the associated diesel generator from Unit 3 operable, emergency power is available for the operation of train B of the CREVS. Thus, the fulfillment of the safety function of this system is assured including that required for an event wherein a loss of offsite power occurs.

The changes have no effect therefore on the probability or consequences of an accident previously evaluated for Browns Ferry Unit 2. Final Safety Analysis Report Chapter 14 evaluations remain unimpacted.

2. The proposed change to the technical specifications does not create the possibility of a new or different kind of accident from any accident previously evaluated.

There are no physical changes to the facility. The changes to the technical specifications merely specify operational support of Unit 2 by Unit 3 EDGs so that power will be supplied to those emergency systems required to mitigate the consequences of accidents.

3. The proposed change does not involve a significant reduction in a margin of safety.

There are no physical changes to the facility and the proposed changes to the technical specifications merely reflect the existing physical conditions.

Surveillance requirements have been instituted to assure the continued operability of the associated emergency power sources necessary for supplying the Standby Gas Treatment and Control Room Emergency Ventilation System requirements.

The Diesel Generator Loading Evaluation qualified the loading, voltage response and frequency response given the following Unit 2 postulated operating conditions, a total loss of offsite power, and a loss of coolant accident with concurrent loss of offsite power.

Therefore, there is no effect on any margin of safety and this proposed change does not involve a reduction in any margin of safety.

The staff has reviewed the licensee's amendment application and analysis of no significant hazards consideration, and concurs with the licensee's conclusions. Therefore, the staff proposes to determine that the application for amendments does not involve significant hazards considerations.

Local Public Document Room
location: Athens Public Library, South Street, Athens, Alabama 35611.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Project Director: Frederick J. Hebbon.

Tennessee Valley Authority, Docket Nos. 50-259, 50-260 and 296, Browns Ferry Nuclear Plant, Units 1, 2, and 3, Limestone County, Alabama

Date of amendment requests: June 4, 1990 (TS 273).

Description of amendment requests: Browns Ferry Nuclear (BFN) Plant, Units 1, 2, and 3, Technical Specifications (TS) Sections 3.7.F and 4.7.F (Primary Containment Purge System) and associated Bases are being revised to more accurately reflect the operations of purging and venting of the primary containment.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The primary containment purge system (PCPS) is designed to provide the primary exhaust path for gases leaving the primary containment during purging operations and the capability to vent the containment. The standby gas treatment system (SGTS) provides the primary exhaust path for venting the containment for the purpose of pressure control. It also provides the secondary exhaust path during purging operations.

The purpose of this proposed change is to more accurately describe the method by which BFN operates the PCPS. This change clarifies the use of the 18 inch primary containment isolation valves for the deinterfering/inerting process for up to 24 hours after placing the reactor mode switch in the RUN position and/or for up to 24 hours prior to reactor shutdown. This is the normal operation of the system. In the event the PCPS is unavailable, the 18 inch vent line through the SGTS may be used as a backup for purging the containment with the same time restrictions.

The two containment isolation valves associated with the PCPS receive a primary containment isolation signal. The alternate 18 inch line going through the SGTS is also isolated if these two valves are closed.

The vent path from primary containment is the small diameter containment atmospheric dilution (CAD) valves. These 2 inch valves are used to maintain primary containment pressure control during normal reactor operations. These valves receive a primary containment isolation signal which overrides the handswitch and closes the valves.

This change does not involve any physical alteration of the containment, design function of any existing equipment, or add any new equipment to BFN. The operating conditions and analysis in the BFN Final Safety Analysis Report (FSAR) are still applicable and will not change as a result of this change. This change only provides additional clarification and makes the TS more consistent with the operation of the plant. This proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. The change does not add any new equipment to the plant or require any existing equipment to be operated in a different manner from which it was designed to operate. Since a new failure mode is not introduced by the change, a new or different kind of accident could not result.

3. The proposed change does not involve a significant reduction in a margin of safety. The primary containment isolation valves associated with purging are currently allowed to be open for purging. This change will specifically limit the time they are allowed to be open for purging to 24 hours after the reactor is placed in the run mode and/or for up to 24 hours prior to reactor shutdown. If a LOCA were to occur, the isolation valves would receive a [an] isolation signal and close.

The vent path to the outside environment is through the CAD valves. The dose consequences through an open pressure control path during a LOCA would be below the 10 CFR 100 limits. The pressure control valve also receives a primary containment isolation signal and is capable of closing within 10 seconds of the isolation signal. Since this proposed TS only provides clarification and the initial design requirements are not altered, there is no reduction in the margin of safety at BFN.

The staff has reviewed the licensee's amendment application and analysis of no significant hazards consideration and concurs with the licensee's conclusions. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards considerations.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Project Director: Frederick J. Hebdon.

Tennessee Valley Authority, Docket Nos. 50-259, 50-260 and 296, Browns Ferry Nuclear Plant, Units 1, 2, and 3, Limestone County, Alabama

Date of amendment requests: August 6, 1990 (TS 282).

Description of amendment requests: The Boiling Water Reactor (BWR) Standard Technical Specifications (STS) allow one hour to isolate the shutdown cooling mode of operation of the Residual Heat Removal (RHR) System whenever primary containment integrity is required and the associated trip system instrument channels are inoperable. At the Browns Ferry Nuclear (BFN) Plant, the similar TS Limiting Conditions of Operation (LCO) requirements exist but there is no prescribed time frame—implicitly inferring that shutdown cooling of RHR should be isolated immediately. To correct this inconsistency with the BWR STS and establish a more appropriate LCO, TVA proposed to revise TS Table 3.2.A to conform as closely as practicable with the BWR STS. In an unrelated editorial TS change, TVA also proposed adding an instrument reference (i.e. PS 68-93 & 94) to Table 3.2.A. that was inadvertently left out of another TS amendment.

Basis for proposed no significant hazards consideration determination: The Commission has established regulatory standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analysis, using the standards in 10 CFR 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, TVA has provided the following analysis:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The shutdown cooling mode of RHR is used during a normal reactor shutdown and cooldown. Shutdown cooling is comprised of a single suction line with two redundant pairs of RHR pumps and two redundant discharge lines. The initial phase of nuclear system cooldown is accomplished by dumping steam from the reactor vessel to the main condenser with the main condenser acting as the heat sink. When reactor water temperature has decreased to the point where the steam supply pressure is no longer necessary to maintain the turbine shaft gland seals, vacuum in the main condenser is no longer required. The RHR system is placed in the shutdown cooling mode of operation to complete the cooldown and provide for decay heat removal. The shutdown cooling mode alone is capable of completing cooldown to 125 °F in less than 20 hours and maintaining the nuclear system at 125 °F so that the reactor can be refueled and serviced.

Note ID of Table 3.2.A currently requires that the shutdown cooling mode of RHR be isolated if primary containment integrity is

required and either the Reactor High Pressure instrument channel or the Group 2 (RHR Isolation-Actuation) Logic function is inoperable. The reactor high pressure instrument channel provides for automatic isolation of the shutdown cooling suction valves when reactor pressure increases to 100 psig to prevent low pressure portions of the RHR system from being overpressurized. The Group 2 logic provides for isolation on a low reactor water level to maintain the primary containment pressure boundary. The proposed change would revise note 1.D to require administratively controlling the affected system isolation valves in the closed position within one hour and declaring the affected system inoperable.

The design basis events (DBEs) mitigated by the RHR System were reviewed to determine what impact these events could have if one were to occur while the RHR is in the shutdown cooling mode and both trip channels of the isolation instrumentation are inoperable.

The DBEs have little or no impact on the RHR System. The RHR shutdown cooling mode is used only during the low pressure (100 psig or less) portion of a normal reactor shutdown/cooldown. The events which were considered and have little or no impact include pipe breaks inside and outside containment, loss of feedwater flow, isolation of all main steam lines, loss of condenser vacuum, pressure regulator failure, inadvertent opening of a safety/relief valve, shutdown from outside the control room, inadvertent opening of all bypass valves, feedwater controller failure, fire, fuel handling accident, loss of fuel pool cooling, turbine generator trip, and an earthquake.

The DBEs which could have an impact on RHR shutdown cooling are as follows:

a. *Shutdown Cooling Malfunction*—This event results in a reactor water temperature decrease and thus contributes to shutdown cooling. The operator may turn off or reduce shutdown cooling to stop the undesired cooling.

b. *Loss of Shutdown Cooling*—The decay heat rate remains the same for this event. An increase in reactor temperature and possibly pressure will occur. Manual operation of the relief valves will limit the pressure and the RHR LPCI mode can be used for core cooling. No unique safety actions are required for this event.

c. *Loss of Offsite AC Power*—This event will have little or no effect since the diesel generators will start automatically to supply power to the RHR System. The decay heat rate is unaffected and the brief interruption of cooling will not result in a significant temperature or pressure increase.

d. *Control Rod Drop Accident*—This event will have little or no effect since the rods are inserted and the plant is already shutdown prior to the accident. Thus, should a rod drop occur, it will not result in criticality and no additional heat will be generated by the core. The core decay heat rate and the cooldown rate are unchanged and the pressure remains unaffected by this event.

It is concluded that the occurrence of a DBE while in the RHR shutdown cooling

mode will have little or no effect on the RHR system pressure boundary integrity and will not significantly increase the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve any modification to plant equipment. No new failure modes are introduced by the change. The consequences of a loss of shutdown cooling or shutdown cooling malfunction remain the same. A loss of shutdown cooling would result in an increase in reactor temperature and a possible pressure increase. However, manual operation of the relief valves would limit the pressure and the RHR LPCI mode could be used for core cooling. No unique safety actions would be required.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change allows operational flexibility without adversely affecting plant safety. The plant operators are allowed one hour on a loss of isolation instrumentation to administratively control the affected system isolation valves in the closed position and declare the affected system inoperable. This allows some time to restore the instrumentation to operable status or provide an alternate means of decay heat removal. During the one-hour period following the loss of trip channels the likelihood of an accident occurring which would require isolation of the shutdown cooling valves is small because the reactor vessel pressure is at or below 100 psig. The current action, isolation of shutdown cooling, would place the unit in an abnormal operating mode. The proposed change would allow one hour to restore the equipment or provide an alternate means of decay heat removal. A more controlled plant evolution is used to transition to this abnormal operating mode. Thus, the margin of safety is not [significantly] reduced by this change.

The staff has reviewed the licensee's amendment application and analysis of no significant hazards consideration and concurs with the licensee's conclusions. Therefore, the staff proposes to determine that TVA's application for amendments does not involve significant hazards considerations.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Project Director: Frederick J. Hebdon.

Tennessee Valley Authority, Docket Nos. 50-259, 50-260 and 296, Browns Ferry Nuclear Plant, Units 1, 2, and 3, Limestone County, Alabama

Date of amendment requests: August 7, 1990. (TS 292).

Description of amendment requests: The Tennessee Valley Authority (TVA)

has performed calculations to determine more realistic flow and pressure demands on the high pressure fire pumps at the Browns Ferry Nuclear (BFN) Plant, Units 1, 2, and 3, based upon actual suppression and service water loads. As such, TVA proposed to revise the BFN Technical Specifications (TS) surveillance requirements of TS Section 4.11.B.1.f for the electric and diesel-driven fire pumps to specify new values for flow (i.e. 2100 gpm) and system head pressure (i.e. 300 feet). The Bases of TS Section 3.11 would also be revised to identify that a backup fire pump is available if all the other high pressure fire pumps become inoperable.

Basis for proposed no significant hazards consideration determination: The Commission has established regulatory standards for determining whether a significant hazards consideration exists, as stated in 10 CFR 50.92(c). At the time a licensee requests a license amendment, 10 CFR 50.91 requires the licensee to provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, TVA has performed and provided the following analysis:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The present BFN technical specification requirements for the electric and diesel-driven high pressure fire pumps [Surveillance Requirements 4.11.B.1.f(2) and 4.11.B.1.f(3)] are based on a single data point on the manufacturer's laboratory performance curve and are not based on actual demand. Tests on the pumps installed at BFN have shown that in some cases they fall just short of achieving the technical specification value for flow at the specified head. The proposed change will revise the pump flow and head requirements based on actual demand requirements.

TVA has performed a calculation to determine the actual fire pump flow/pressure requirements to meet the most demanding fire suppression water load and an above normal raw service water (RSW) load. The calculation concluded that a fire pump developing 2100 gpm at a system head of 300 feet will adequately meet the fire suppression water and RSW loads. This requirement is applicable to both the electric and diesel-driven fire pumps.

This change will not involve an increase in the probability or consequences of a design basis event. It will ensure the fire protection system can supply sufficient water to suppress fires while not placing an overly restrictive surveillance requirement on the pumps.

2. The proposed change does not create the possibility of a new or different kind of

accident from any accident previously evaluated.

The proposed change to pump flow and head requirements for the electric and diesel-driven high pressure fire pumps does not involve any modification to plant equipment. No new failure modes are introduced nor are any new system interactions introduced by the change. The methods and ability of the BFN fire protection system to suppress fires is unaffected by the change. Sufficient capability will still exist to suppress fires and to supply the necessary demands. Therefore, the change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The current technical specification flow and head requirements for the electric and diesel-driven fire pumps are 2500 gpm at system heads of 300 and 340 feet respectively. The proposed change would revise the flow and head requirements for both the electric and diesel-driven fire pumps to 2100 gpm at a system head of 390 feet. The current technical specification values are based on a single data point on the manufacturer's laboratory performance curve and are not based on actual demand. The proposed values are based on a calculation of the actual demands that must be met for fire suppression and RSW loads plus an additional margin. Although the fire pump surveillance flow requirements have been reduced, sufficient capacity still exists beyond the projected demands for fire suppression water and RSW. Thus, the margin of safety has not been reduced.

The staff has reviewed the licensee's amendments application and analysis of no significant hazards consideration and concurs with the licensee's conclusions. Therefore, the staff proposes to determine that TVA's application for amendments does not involve significant hazards considerations.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Project Director: Frederick J. Hebdon.

United States Department of Commerce, National Institute of Standards and Technology, Docket No. 50-184, NIST (formerly known as National Bureau of Standards) Test Reactor or NBSR.

Date of amendment request: July 27, 1990 and August 1, 1990.

Description of amendment request: The amendment would revise section 6.2 of the NIST Technical Specifications (TS) to delete the specific description of the number and type of heat exchangers used in the primary cooling system. The present TS read, in part, as follows: 6.2 *Reactor Coolant System.* The reactor

coolant system shall consist of a reactor vessel, a single cooling loop, containing one or two, shell and tube heat exchangers, and appropriate pumps and valves. * * * Heat exchanger tubes shall be designed for 100 psig and a temperature of 150 °F * * *. The revised TS would read as follows: The reactor coolant system shall consist of a reactor vessel, a single cooling loop, containing heat exchangers, and appropriate pumps and valves. * * * Heat exchangers shall be designed for 100 psig and a temperature of 150 °F * * *.

Basis for proposed no significant hazards consideration determination:

The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The staff agrees with the licensee's no significant hazard consideration determination analysis for the following reasons:

1. In the analysis of the loss-of-flow accident in the primary system, analyzed in the 1984 renewal of the license, it was concluded that the peak fuel temperature that would result from a loss-of-flow transient is sufficiently low and would not result in fuel melting or cladding failure. The number and type of heat exchangers did not enter this analysis, and therefore, neither the probability or consequences of such an accident would be increased. The heat exchanger has not been a factor in any of the accident analyses considered in the 1984 license renewal. The type and quantity of heat exchangers, therefore, does not have to be a TS requirement.

2. The type and quantity of heat exchangers used was not a factor in any accident analyses of the 1984 license renewal. The basic design specifications for any type heat exchanger remain exactly the same. These include material, design pressure and temperature and fabrication code requirements. Performance specifications are unaffected, including those contained in the Limiting Conditions for Operation in the TS. These conditions fully satisfy the basis of any intended design description requirements.

3. The type and quantity of heat exchangers used was not a factor in any accident analyses and the licensee will determine the capacity of the heat exchangers to meet the load requirement. Stipulation of the number and type of heat exchangers in the TS limits the licensee from making a selection of the most suitable heat exchangers using the latest technology, which could offer significant improvement in reliability, for the NIST Test Reactor application.

Based upon the above discussion, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: N/A

Attorney for licensee: N/A

NRC Project Director: Seymour H. Weiss

Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: July 20, 1990

Description of amendment request: The proposed amendment would revise the surveillance testing requirements of certain engineered safeguards equipment presently specified in the Vermont Yankee Technical Specifications so that requirements of the Technical Specifications are consistent with the requirements of 10 CFR 50.55a. Obsolete Technical Specifications related to a past LFCI pump impeller wear ring replacement are also removed.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee addressed the above three standards in the amendment application. In regard to the three standards, the licensee provided the following analysis:

The discussion below addresses each of these three criteria and demonstrates

that the proposed amendment involves no significant hazards considerations:

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated. Engineered safeguards systems are provided to limit the probability and consequences of certain accidents. This change does not alter any of the engineered safeguards systems themselves; it only changes testing requirements for these systems to make them consistent with applicable regulatory requirements. We have analyzed the changes in equipment testing frequency resulting from this proposal in support of a previously submitted Technical Specification change dated June 8, 1989. These analyses are documented in a Vermont Yankee Letter dated July 15, 1988. The corresponding NRC Safety Evaluation Report (SER) is provided in license amendment No. 114 issued July 21, 1989. Although submitted for a different (but similar) amendment request, the NRC SER found our methods and data bases acceptable for drawing conclusions regarding correlations between system unavailability versus test frequency. Based on those methods, we have concluded that any testing frequency have an insignificant effect on plant safety. It is further noted that testing in accordance with ASME Section XI confirms the operational readiness of the subject equipment and provides assurance that critical equipment characteristics (pump flow capacities, valve stroke times, etc.) are maintained. In addition, as discussed above, existing Technical Specifications dealing with LPCI pump impeller wear ring replacement no longer apply. Therefore, the proposed change will continue to assure the availability of these systems to perform their intended safety function, hence the probability or consequences of any accident previously evaluated is not significantly increased.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated. No physical change is being made to any of the subject systems, and no new testing techniques or procedures are being proposed. The test frequency is being changed and equipment function will continue to be tested and maintained in accordance with applicable regulations to assure it does not become degraded. Further, LPCI pump impeller wear ring replacement has been completed and related Specifications are no longer necessary. Thus, the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment will not involve a significant reduction in a margin of safety. The proposed change relies on inservice testing to assure system operability. The Vermont Yankee Inservice Testing Program is based on ASME Section XI, hence the proposed change satisfies the applicable regulatory criteria as specified in Title 10 CFR 50.55a. The proposed deletion of Technical Specifications 3.5.A.3 and 4.5.A.3, as related to pump impeller wear ring replacement, eliminates requirements that no

longer apply. Thus, this proposed change does not reduce a margin of safety.

Based on the above, we have determined that this change does not constitute a significant hazards consideration as defined in 10 CFR 50.92(c).

The staff has reviewed the licensee's analysis and agrees with it. Therefore, we conclude that the amendment satisfies the three criteria listed in 10 CFR 50.92. Based upon that conclusion the staff proposed to make a no significant hazards consideration determination.

Local Public Document Room
location: Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301
Attorney for licensee: John A. Ritscher, Esquire, Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02110
NRC Acting Project Director: Victor Nerses.

PREVIOUSLY PUBLISHED NOTICES OF CONSIDERATION OF ISSUANCE OF AMENDMENTS TO OPERATING LICENSES AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the Federal Register on the day and page cited. This notice does not extend the notice period of the original notice.

Long Island Lighting Company, Docket No. 50-322, Shoreham Nuclear Power Station Unit 1 Suffolk County, New York

Date of amendment request: January 5, 1990

Brief description of amendment request: This amendment would remove Long Island Lighting Company's authority to operate the Shoreham facility and would result in the issuance of a "possession only" license.

Date of publication of individual notice in Federal Register: August 21, 1990 (55 FR 34098)

Expiration date of individual notice: September 20, 1990

Local Public Document Room
location: Shoreham-Wading River Public

Library, Route 25A, Shoreham, New York 11786-9697.

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: February 12, 1990

Brief description of amendment request: The proposed amendments would extend the allowable Limiting Condition for Operation outage times for residual heat removal service water system and emergency service water system from 3 days to 7 days.

Date of publication of individual notice in Federal Register: August 20, 1990 (55 FR 33992)

Expiration date of individual notice: September 19, 1990

Local Public Document Room
location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Public Service Electric & Gas Company, Docket No. 50-311, Salem Generating Station, Unit No. 2, Salem County, New Jersey

Date of amendment request: July 27, 1990

Brief description of amendment request: The amendment would change Table 4.8-1 in the Salem 2 Technical Specifications to incorporate the changes recommended by Generic Letter 84-15. This would allow the surveillance testing of diesel generators to be based on the last 20 valid tests per diesel generator unit instead of the last 100 valid tests per nuclear unit.

Date of publication of individual notice in Federal Register: August 6, 1990 (55 FR 31919) Correction Notice August 13, 1990 (55 FR 32986)

Expiration date of individual notice: Comment period expired August 21, 1990; Notice period expires September 5, 1990.

Local Public Document Room
location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act

of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the Federal Register as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Reactor Projects.

Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of application for amendment: August 24, 1989, as supplemented June 5, 1990.

Brief description of amendment: The amendment changes the TS Figures 3.10-4 and 3.10-5. These changes incorporate the results of analyses using a new three dimensional analytical technique that more explicitly models the plant-specific core power distributions.

Date of issuance: August 22, 1990
Effective date: August 22, 1990
Amendment No.: 128

Facility Operating License No. DPR-23. Amendment revises the Technical Specifications.

Date of initial notice in Federal Register: November 1, 1989 (54 FR 46142). The June 5, 1990, letter provided clarifying information that did not change the initial determination of no significant hazards consideration as published in the Federal Register.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 22, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535.

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: August 2, 1989

Brief description of amendment: This amendment deletes the requirement for a hydrostatic test at 150 percent of design pressure on the critical service water headers every five years. System testing will continue under ASME, Section XI inservice inspection requirements.

Date of issuance: August 21, 1990

Effective date: August 21, 1990

Amendment No.: 133

Provisional Operating License No. DPR-20. The amendment revises the Technical Specifications.

Date of initial notice in Federal Register: March 21, 1990 (55 FR 10531). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 21, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: November 28, 1988, as revised February 15, 1990

Brief description of amendments: The amendments change the Technical Specifications for revising the administrative control requirements for the Catawba Safety Review Group (CSRG).

Date of issuance: August 20, 1990

Effective date: August 20, 1990

Amendment Nos.: 77 and 71

Facility Operating License Nos. NPF-35 and NPF-52: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: February 8, 1989 (54 FR 6192). Subsequent to the date of the initial notice, the licensee submitted supplemental information dated February 15, 1990. This information provided increased specificity with respect to the qualifications of the CSRG. It did not alter the Commission's proposed determination of no significant hazards consideration.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 20, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Duquesne Light Company, Docket No. 50-412, Beaver Valley Power Station, Unit No. 2, Shippingport, Pennsylvania

Date of application for amendment: March 2, 1989, as supplemented by letter dated June 12, 1990.

Brief description of amendment: This amendment revises the Appendix A TSs relating to the reactor trip system and engineered safety features (ESF) actuation system instrumentation trip set points and allowable values. Specifically, the amendment modifies TS Tables 2.2-1 and 3.3-4.

Date of issuance: August 17, 1990

Effective date: August 17, 1990

Amendment No.: 155

Facility Operating License No. NPF-73: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: April 19, 1989 (54 FR 15828). The June 12, 1990, letter provided clarifying information that did not change the initial determination of no significant hazards consideration as published in the Federal Register. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 17, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-366, Edwin I. Hatch Nuclear Plant, Unit 2, Appling County, Georgia

Date of application for amendment: April 11, 1990.

Brief description of amendment: The amendment revises TS 4.0.2 by deleting

the requirement that the combined time interval for any three consecutive surveillance intervals not exceed 3.25 times the specified surveillance interval. The changes are consistent with the guidance of Generic Letter 89-14, "Line-Item Improvements in Technical Specifications—Removal of the 3.25 Limit on Extending Surveillance Intervals."

Date of issuance: August 20, 1990.

Effective date: August 20, 1990.

Amendment No.: August 20, 1990.

Facility Operating License No. NPF-5: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: May 16, 1990 (55 FR 20358). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 20, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room

location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513.

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana

Date of amendment request: June 6, 1990.

Brief description of amendment: The amendment revises the number of smoke detectors in Technical Specification Table 3/4.3.7.8-1, "Fire Detection Instrumentation" from two to three. The additional smoke detector is added due to modifications in the control rod drive maintenance rebuild facility. The modifications will include installation of a suspended ceiling and the additional smoke detector.

Date of issuance: August 21, 1990.

Effective date: August 21, 1990.

Amendment No.: Amendment No. 46.

Facility Operating License No. NPF-47: The amendment revised the Technical Specifications.

Date of initial notice in Federal Register: June 27, 1990 (55 FR 26284). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 21, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room

location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803.

Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Units No. 1 and 2, Berrien County, Michigan

Date of application for amendments: September 15, 1988.

Brief description of amendments:

These amendments remove references to obsolete surveillance interval extensions from the Technical Specifications (TS). These references are no longer required and their removal will make the TS more readable.

Date of issuance: August 6, 1990.

Effective date: August 6, 1990.

Amendments Nos.: 144/131.

Facility Operating Licenses Nos. DPR-58 and DPR-74: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: June 27, 1990 (55 FR 26286). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 6, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room

location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of application for amendments: November 28, 1989.

Brief description of amendments: The amendments change Technical Specification (TS) 3/4.8.1, "A.C. Sources," to require that each diesel generator fuel storage tank contain at least 46,000 gallons of fuel. The amendments also clarify the TS requirement to state that the minimum fuel storage tank volume is based on the indicated volume of fuel in the tank.

Date of issuance: August 13, 1990

Effective date: August 13, 1990

Amendments Nos.: 145/132

Facility Operating Licenses Nos. DPR-58 and DPR-74: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: April 18, 1990 (55 FR 14510). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 13, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room

location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of application for amendments: April 16, 1990

Brief description of amendments: These amendments change the Unit 1 Technical Specifications (TS) by removing cycle-specific core operating

limits from the TS and placing them into a cycle-specific Core Operating Limits Report (COLR). This change is in accordance with NRC Generic Letter 86-16. Additionally, surveillance requirement 4.1.1.4.1, which addresses measurement of the moderator temperature coefficient (MTC), is removed from the TS of both units as this requirement is specifically addressed in the COLR submitted for each unit.

Date of issuance: August 20, 1990

Effective date: August 20, 1990

Amendment Nos.: 146, 133

Facility Operating Licenses Nos. DPR-58 and DPR-74: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: May 30, 1990 (55 FR 21972). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 20, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room

location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Indiana Michigan Power Company, Docket No. 50-315, Donald C. Cook Nuclear Plant, Unit No. 1, Berrien County, Michigan

Date of application for amendment: January 31, 1990

Brief description of amendment: This amendment changes Technical Specification (TS) 3/4.7.1.5.1.b, "Steam Generator Stop Valves," to require full valve closure within 8 seconds. TS Table 3.3-5, "Engineered Safety Features Response Times," has also been changed to reflect the increased closure time.

Date of issuance: August 22, 1990

Effective date: August 22, 1990

Amendment No.: 147

Facility Operating License No. DPR-58: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: March 7, 1990 (55 FR 8227). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 22, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room

location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of application for amendment: January 5, 1990, as revised June 19, 1990.

The June 19, 1990 submittal withdrew portions of the January 5, 1990 application that addressed items not covered by GL 88-16. The June 19, 1990 letter did not change or add to the original application and the proposed determination of no significant hazards consideration was not affected.

Brief description of amendment: The amendment revised the Duane Arnold Energy Center Technical Specifications by relocating explicit values for certain cycle-specific parameters into a referenced Core Operating Limits Report (COLR). The values found in the COLR will continue to be calculated in accordance with NRC-approved methodologies. These changes are consistent with the guidance of NRC Generic letter 88-16, dated October 4, 1988.

Date of issuance: August 23, 1990

Effective date: August 23, 1990

Amendment No.: 167

Facility Operating License No. DPR-49. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: May 16, 1990 (55 FR 20359) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 23, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S. E., Cedar Rapids, Iowa 52401.

Date of initial notice in Federal Register: May 16, 1990 (55 FR 20359) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 23, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S. E., Cedar Rapids, Iowa 52401.

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit No. 2, Scriba, New York

Date of application for amendment: October 5, 1989

Brief description of amendment: This amendment revises Technical Specifications, sections 3/4.3.6, Instrumentation-Control Rod Block Instrumentation; 3/4.3.7, Instrumentation-Monitoring Instrumentation; 3/4.9.2, Refueling Operations-Instrumentation; and 3/4.9.10, Refueling Operations-Control Rod Removal. The Bases for sections 3/4.9.2 and 3/4.9.10 will be revised to be consistent with changes made in the Technical Specifications. This revision

is required to permit fuel loading in preparation for the second cycle of operation with multiple control rods withdrawn. This revision will also delete Technical Specifications, section 3/4.10.7, Special Test Exceptions-Special Instrumentation-Initial Core Loading, which no longer applies.

Date of issuance: August 17, 1990

Effective date: As of the date of its issuance to be implemented within 30 days.

Amendment No.: 21

Facility Operating License No. NPF-69. Amendment revises the Technical Specifications.

Date of initial notice in Federal Register: January 24, 1990 (55 FR 2437) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 17, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of application for amendment: June 14, 1990

Brief description of amendment: The amendment revised the Technical Specification (TS) to add new isolation valves on each common Control Rod Drive header to the table of primary containment isolation valves that must be operable and to delete the existing individual Hydraulic Control Unit isolation valves from the TSs.

Date of issuance: August 16, 1990

Effective date: September 30, 1990

Amendment No.: 42

Facility Operating License No. NPF-39. This amendment revised the Technical Specifications.

Date of initial notice in Federal Register: June 27, 1990 (55 FR 26290) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 16, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendments: June 22, 1990

Brief description of amendments: The amendments revised the Surveillance Requirements to allow the main and auxiliary hoists to travel not more than six (6) inches higher to provide more clearance between a main and/or auxiliary hoist grapple carried component and pool/cavity structures. Also, the amendments removed the requirement for a fuel loaded auxiliary hoist interlock by prohibiting the lifting of a fuel assembly with the auxiliary hoist.

Date of issuance: August 16, 1990

Effective date: August 16, 1990

Amendment Nos.: 43 and 8

Facility Operating License Nos. NPF-39 and NPF-85. These amendments revised the Technical Specifications.

Date of initial notice in Federal Register: July 11, 1990 (55 FR 28479) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 16, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania.

Date of application for amendments: July 11, 1989 as supplemented on April 20, 1990. The supplemental letter provided editorial and administrative revisions to the TS changes proposed in the original submittal. The staff has determined that these additional changes do not affect the proposed no significant hazards determination.

Brief description of amendments: These amendments changed the Technical Specifications to remove organization charts in accordance with the guidance provided in NRC Generic Letter 88-06 and to make miscellaneous administrative changes. One proposed miscellaneous change, that would result in audit reports being forwarded to responsible corporate officers rather than to the Executive Vice President-Nuclear, was not approved in the amendments and will continue to be reviewed by the NRC staff as a separate action.

Date of issuance: August 20, 1990

Effective date: August 20, 1990

Amendment Nos.: 155 and 157

Facility Operating License Nos. DPR-44 and DPR-56. Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: August 23, 1989 (54 FR 35107)
The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 20, 1990.

No significant hazards consideration comments received: No

Local Public Document Room
location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Power Authority of The State of New York, Docket No. 50-286, Indian Point Unit No. 3, Westchester County, New York

Date of application for amendment: October 13, 1987

Brief description of amendment: The amendment revises the Technical Specification Tables 3.6-1 and 4.4-1 to reflect modifications to certain containment isolation valves. Also, the appropriate valve identification prefix and suffix have been added to valves listed in Tables 3.6-1 and 4.4-1.

Date of issuance: August 13, 1990

Effective date: August 13, 1990

Amendment No.: 102

Facility Operating License No. DPR-64: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 13, 1990.

No significant hazards consideration comments received: No

Local Public Document Room
location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

Public Service Electric & Gas Company, Docket No. 50-311, Salem Generating Station, Unit No. 2, Salem County, New Jersey

Date of application for amendment: July 27, 1990

Brief description of amendment: The amendment changed the Technical Specifications to revise the diesel generator surveillance test frequency requirements.

Date of issuance: August 22, 1990

Effective date: August 22, 1990

Amendment No.: 93

Facility Operating License No. DPR-75: This amendment revised the Technical Specifications. Public comments requested as to proposed no significant hazards consideration: Yes (55 FR 31919 dated August 6, 1990). That notice provided an opportunity to submit comments on the Commission's

proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by August 21, 1990; as corrected (55 FR 32986, August 13, 1990), the corrected hearing date is September 5, 1990. The notice indicated that if the Commission makes a final no significant hazards consideration determination any such hearing would take place after issuance of the amendment. The Commission's related evaluation is contained in a Safety Evaluation dated August 22, 1990.

Attorney for licensee: Bishop, Cook, Purcell and Reynolds, 1400 L Street, NW., Washington, DC 20555-3052.

Local Public Document Room
location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

Southern California Edison Company, et al., Docket No. 50-206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of application for amendment: April 19, 1990, as supplemented June 18, 1990.

Brief description of amendment: During the current Cycle 11 refueling outage, the licensee is making changes to the 480 volt system for San Onofre Unit 1 which will reconfigure the system from three electrical buses and three station service transformers (SSTs) to four electrical buses and four SSTs. Accordingly, Technical Specification sections 3.7, 3.14, 4.1.1 and 4.4 are being revised to reflect these modifications.

Date of issuance: August 14, 1990

Effective date: This license amendment is effective the date of issuance and must be fully implemented no later than 30 days from date of issuance.

Amendment No.: 134

Provisional Operating License No. DPR-13: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: May 30, 1990 (55 FR 21979). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 14, 1990.

The supplemental information provided by letter dated June 18, 1990, did not alter the action or affect the no significant hazards determination in the original notice.

No significant hazards consideration comments received: No comments.

Local Public Document Room
location: Main Library, University of California, P.O. Box 19557, Irvine, California 92713.

Tennessee Valley Authority, Docket No. 50-327, Sequoyah Nuclear Plant, Unit 1, Hamilton County, Tennessee

Date of application for amendment: May 4, 1990 (TS 90-07)

Brief description of amendment: This amendment modifies Table 3.3-11, Fire Detection Instruments, of the Sequoyah Unit 1 Technical Specifications (TSs). The changes add two smoke detectors which were installed in the volume control tank room during the recent Unit 1 Cycle 4 refueling outage. In its application, the Tennessee Valley Authority (TVA) also proposed changes to Table 3.3-11 of the Sequoyah Unit 2 TSs. As TVA requested, these changes will be issued after these detectors are installed in the Unit 2 volume control tank room during the Unit 2 Cycle 4 refueling outage. This outage is scheduled to begin in October 1990.

Date of issuance: July 27, 1990

Effective date: July 27, 1990

Amendment No.: 142

Facility Operating License No. DPR-77: Amendment revised the Unit 1 Technical Specifications.

Date of initial notice in Federal Register: June 13, 1990 (55 FR 24004)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 27, 1990.

No significant hazards consideration comments received: No comments.

Local Public Document Room
location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: May 4, 1990, as supported by the letter dated February 14, 1990 (TS 90-12)

Brief description of amendments: The amendments modify the Sequoyah Nuclear Plant, Units 1 and 2, Technical Specifications (TSs) to increase the maximum enrichment of fuel allowed on the site from 4.0 to 5.0 weight percent Uranium 235. Changes have been made to Section 5.0, Design Features, and Surveillance Requirement 4.9.1.4 on the boron concentration in the spent fuel storage pool has been added to the TSs. New fuel with an enrichment greater than 4.5 weight percent may not be stored in the new fuel pit storage racks. This fuel may be stored in the spent fuel storage pool.

In the application, the licensee also requested changes to the TSs to allow the substitution of Zircaloy-4 or stainless steel filled rods or of open

water channels for fuel rods in fuel assemblies. This request is still under staff review and will be the subject of a future letter.

Date of issuance: August 1, 1990

Effective date: August 1, 1990

Amendment Nos.: 144 (Unit 1), 125 (Unit 2)

Facility Operating Licenses Nos. DPR-77 and DPR-79. Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 1, 1990.

No significant hazards consideration comments received: No comments.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Vermont Yankee Nuclear Power Corporation, Docket No. 50-271,
Vermont Yankee Nuclear Power Station,
Vernon, Vermont

Date of application for amendment:
April 8, 1990.

Brief description of amendment: The amendment modifies the Limiting Conditions of Operation and Surveillance Requirements for the battery systems.

Date of issuance: August 23, 1990

Effective date: By September 24, 1990

Amendment No.: 125

Facility Operating License No. DPR-28. Amendment revised the Technical Specifications and/or License.

Date of initial notice in Federal Register: May 2, 1990 (55 FR 18415). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 23, 1990.

No significant hazards consideration comments received: No comments.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION AND OPPORTUNITY FOR HEARING (EXIGENT OR EMERGENCY CIRCUMSTANCES)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations.

The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for a Hearing. For exigent circumstances, the Commission has either issued a Federal Register notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action.

Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By October 5, 1990, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition

should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room for the particular facility involved.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any

limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (Project Director): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.71(d).

Commonwealth Edison Company
Docket Nos. 50-237 and 50-249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Date of application for amendments: July 31, 1990

Brief description of amendments: The amendments revise Technical Specification Section 3.7/4.7.A.2 to exclude the reactor building closed cooling water system inlet pathway for each unit from the requirement to perform local leak rate testing until the next refueling outage for each unit.

Date of issuance: August 9, 1990

Effective date: August 9, 1990

Amendment Nos.: 112 for Dresden 2 and 108 for Dresden 3.

Provisional and Facility Operating License Nos. DPR-19 and DPR-25. The amendments revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No

The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated August 9, 1990.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690.

Local Public Document Room location: Morris Public Library, 604 Liberty Street, Morris, Illinois 60450.

Dated at Rockville, Maryland, this 28th day of August, 1990.

For the Nuclear Regulatory Commission
Steven A. Varga,
Director, Division of Reactor Projects—I/II,
Office of Nuclear Reactor Regulation.
[FR Doc. 90-20710 Filed 9-4-90; 8:45 am]

BILLING CODE 7590-01-D

Advisory Committee on Reactor Safeguards; Revised Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on September 6-11, 1990, in room P-110, 7920 Norfolk Avenue, Bethesda, Maryland. Notice of this meeting was published in the **Federal Register** on August 23, 1990.

Thursday September 6, 1990, room P-110, 7920 Norfolk Avenue, Bethesda, Md.

8:30 a.m.-8:45 a.m.: Chairman's Remarks (Open)—The ACRS Chairman will briefly report regarding items of current interest.

8:45 a.m.-9:15 a.m.: Yankee (Rowe) Nuclear Power Station (Open)—The Committee will review and report on the status of reactor pressure vessel radiation embrittlement and its impact on the continued operation of the Yankee (Rowe) plant.

9:15 a.m.-10 a.m.: Reactor Operating Experience (Open)—The Committee will discuss the lessons learned from reactor operating experience and events, including the Westinghouse Owners Group Study justifying reduction of turbine stop valve test frequency and the impact of noncondensable gases on

operation of safety-related systems and components.

10:15 a.m.-10:45 a.m.: ACRS Activities (Open)—The Committee will discuss anticipated ACRS subcommittee activities and items proposed for consideration by the full Committee.

10:45 a.m.-12 Noon: ACRS Procedures and Practices (Open)—The Committee will discuss the practices and policies related to procedural aspects of ACRS subcommittee and subgroup activities. Representatives of the NRC's Office of the General Counsel will participate in this discussion.

1 p.m.-2:30 p.m.: Generic Issue 23, Reactor Coolant Pump Seal Failures (Open)—The Committee will review and report on proposed resolution of this generic issue.

2:45 p.m.-3:15 p.m.: ACRS Activities (Open)—The Committee will discuss the scope and content of its annual report to the Congress on the NRC safety research program.

3:15 p.m.-6 p.m.: Preparation of CFRS Reports to NRC (Open)—The Committee will discuss proposed ACRS reports to NRC regarding safety-related issues, including severe accident risk assessment for five U.S. nuclear plants (NUREG-1150), systematic assessment of licensee performance and proposed Committee comments regarding ACRS use of part-time consultants.

The members will also discuss matters and specific issues which were not completed during previous meetings as time and availability of information permit.

Friday, September 7, 1990, room P-110, 7920 Norfolk Avenue, Bethesda, Md.

8:30 a.m.-11:30 a.m.—Resolution of Generic Issues (Open)—The Committee will review and comment on the priority rankings proposed by the NRC staff for a group of new generic issues. Representatives of the NRC staff will participate, as appropriate.

11:30 a.m.-12:15 p.m.—NRC Quantitative Safety Goals (Open)—The Committee will discuss the proposed implementation plan for the NRC quantitative safety goals with a possible briefing by the NRC staff on this matter.

1:15 p.m.-3:15 p.m.—Nine Mile Point Nuclear Plant (Open)—A briefing and discussion will be held regarding restart of Nine Mile Point Unit 1 following an extended shutdown for safety-related deficiencies.

3:15 p.m.-5 p.m.—Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports to NRC regarding items considered during this meeting.

5 p.m.-5:45 p.m.: ACRS Subcommittee Activities (Open)—The Committee will

hear and discuss a report of the Human Factors Subcommittee regarding procedural violations identified as a result of the lessons learned from the Chernobyl nuclear plant accident.

Saturday, September 8, 1990, room P-110, 7920 Norfolk Avenue, Bethesda, Md.

8:30 a.m.-12 Noon: Preparation of ACRS Reports (Open)—A discussion will be held on proposed ACRS reports to the NRC, as appropriate, including resolution of GI-23, Reactor Coolant Pump Seal Failures, the Yankee Nuclear Power Plant, and other items considered during this meeting.

1-1:30 p.m.: ACRS Subcommittee Activities (Open)—The Committee will hear reports and hold discussions regarding ACRS subcommittee activities including thermal-hydraulic phenomena and decay heat removal.

1:30 p.m.-2 p.m.: Nominations of ACRS Members (Open)—The members will discuss qualifications of candidates proposed for appointment to the Committee.

This session will be closed to discuss information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

2 p.m.-3:30 p.m.: Miscellaneous (Open)—The Committee will complete discussion of items considered during this meeting.

Procedures for the conduct of and participation in ACRS meetings were published in the Federal Register on September 27, 1989 (54 FR 39594). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if

such rescheduling would result in major inconvenience.

I have determined in accordance with section 10(d) Public Law 92-463 that it is necessary to close portions of this meeting noted above to discuss information the release of which would represent an unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 301/492-8049), between 7:45 a.m. and 4:30 p.m.

Dated: August 29, 1990.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 90-20800 Filed 9-4-90; 8:45 am]

BILLING CODE 7590-01-M

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 1.159, "Assuring the Availability of Funds for Decommissioning Nuclear Reactors," provides guidance to applicants and licensees of nuclear power plants on methods acceptable to the NRC staff for complying with requirements on funds for decommissioning. This guide also provides guidance on the content and form of financial assurance mechanisms.

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Written comments may be submitted to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Copies of issued guides may be purchased from the Government Printing Office at the

current CPO price. Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7082, telephone (202) 275-2060 or (202) 275-2171. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details of this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161.

Authority: 5 U.S.C. 552(a).

Dated at Rockville, Maryland this 10th day of August 1990.

For the Nuclear Regulatory Commission.

C.J. Heltemes, Jr.,

Deputy Director for Generic Issues and Rulemaking Office of Nuclear Regulatory Research.

[FR Doc. 90-20803 Filed 9-4-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-328]

Tennessee Valley Authority (Sequoyah Nuclear Plant, Unit 2); Exemption

I

The Tennessee Valley Authority (TVA) holds Facility Operating License No. DPR-79 which authorizes operation of the Sequoyah Nuclear Plant, Unit 2 (the facility, Unit 2). The license provides, among other things, that the facility is subject to all rules,

regulations, and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility consists of a pressurized water reactor located on TVA's Sequoyah site in Hamilton County, Tennessee.

II

Section III.A.6(b) of appendix J to 10 CFR part 50 requires that if two consecutive Type A tests fail to meet the applicable acceptance criteria, a Type A test shall be conducted at each refueling outage. This increased testing frequency would continue until two consecutive Type A tests shall meet the acceptance criteria, after which time the normal retest frequency of three Type A tests at approximately equal intervals within each 10-year service period would resume. The approximately equal intervals are defined in Surveillance Requirement 4.6.1.2.a of the Sequoyah Technical Specifications (TSs) as 40 ± 10 months. Type A tests means tests of the primary reactor containment to measure the expected overall integrated leakage rate of the containment for the loss-of-coolant accident conditions.

The exemption would allow (1) Unit 2 to continue on the normal Type A test frequency having TVA conduct the third Type A test of the first 10-year service period in the Unit 2 Cycle 5 refueling outage in 1992 and (2) TVA not to conduct a Type A test in the upcoming Unit 2 Cycle 4 refueling outage which is

scheduled to begin in September 1990. Type A tests conducted in the Unit 2 Cycle 2 (November 1984) and Unit 2 Cycle 3 (March 1989) refueling outages are both considered failures because they did not meet the leak rate acceptance criteria.

In its application dated May 21, 1990 for relief, TVA stated that it was requesting an exemption from Appendix J because it considered the increased frequency of the type A tests inappropriate for the causes of the two consecutive Type A test failures. TVA stated that the measured leakage results for the two tests were below the maximum allowed leakage for the Unit 2 containment and a general containment leakage problem does not exist. A corrective action program that addresses the causes of the test failures has been implemented at Sequoyah. TVA concluded that increasing the frequency of the Type A tests at Unit 2 would not provide a corresponding increase in the level of confidence of demonstrating Unit 2 containment integrity. TVA further stated that the economic impact of performing the test in engineering time and the additional unit shutdown time to conduct the test would be an imprudent use of its resources.

The staff has reviewed the history of Type A tests conducted at the plant and found that the last two Type A as-found test results have been failures as noted below:

Type A tests performed	As-found leak rate (% per day)	0.75 la limit (% per day)	1.0 la limit (% per day)	Status
Preoperational test (1981).....	0.14	0.1875	0.25	Pass.
Test 1 (1984).....	.22	.1875	.25	Failure.
Test 2 (1989).....	.20	.1875	.25	Failure.

The staff noted that the last two test results exceeded the acceptance limit of 0.75 La required by Appendix J but did not exceed the maximum allowable rate of 1.09 La for Sequoyah. TVA stated that the root cause of the Cycle 2 failure was packing leakage from two outboard root valves on two containment pressure sensing lines. TVA stated that it performed maintenance on the pressure sensing lines during the Unit 2 Cycle 2 refueling outage and repaired the root valves which resulted in an immediate reduction in the measured leak rate to below the acceptance limit. TVA further stated that it had also implemented corrective actions to prevent the

pressure sensing line leakage in the future. These actions include the following:

(1) Programmatic review of the instrument maintenance and operation activities to identify potential impacts on containment integrity, and

(2) Expansion of the local leak rate test (LLRT) program to require an LLRT following any maintenance performed on the pressure sensing lines. Post-maintenance leak rate testing is required and added to the Surveillance Instruction (SI) 159.1, "Leak Rate Test on Containment Pressure Instrumentation".

TVA stated that the primary cause of the Cycle 3 test failure was due to

excessive leakage through Penetration X-59. The root cause was a personnel error in connecting the hose from the test equipment to the test connection for the values associated with Penetration X-59. TVA further stated that another factor that contributed to the excessive leakage through Penetration X-59 involved a maintenance sequence that occurred when the outboard containment isolation valve (FCV-67-88) was previously disassembled, cleaned, and reassembled during the outage. TVA stated that it has implemented corrective actions for the root causes of excessive leakage from

Penetration X-59. These actions include the following:

(1) Revision of the LLRT program (SI-158.1) to include instructional steps that require the test hoses to be visually inspected to ensure that no restrictions or crimped conditions exist, and

(2) Revision of the Maintenance Instructions (O-MI-MVV-000-008.0) to ensure that when soft-seated butterfly valves without internal disc stops are removed from the piping, the valve operator limits are set with the valve body attached to ensure that valve position is established prior to reinstallation.

The staff has reviewed TVA's submittal and agrees with TVA that the root cause of each of the last two Type A test failures was due to excessive leakage of a single component or penetration in the containment boundary and that a general containment leakage problem does not exist. Even with the excessive leakage, the test results were below the maximum allowable leak rate of 1.0 La for Sequoyah Unit 2. TVA has corrected and repaired the components that caused the two Type A test failures and implemented a corrective action program that addresses the causes of these test failures to prevent future test failures. Additionally, the current appendix J leak rate limit for Type A tests contains a 25% safety margin between the leak rate test acceptance criteria and the leak rate assumed for a loss-of-coolant accident (i.e., La). A proposed revision to Appendix J currently under consideration would remove this margin in the future. With the above corrective actions and the fact that the last two test failures were below the maximum allowable leak rate of 1.0 La, the staff has concluded that the requested exemption has no significant impact on containment integrity and no benefit would be gained by requiring TVA to perform Type A tests on an accelerated test frequency. Therefore, the staff concludes that the licensee's requested exemption from the accelerated Type A test frequency for the Type A test failures should be granted. This exemption applies only to Type A test failures in the Unit 2 Cycle 2 and Unit 2 Cycle 3 refueling outages as two consecutive test failures. Thus, if a Type A test failure were to occur during the Unit 2 Cycle 5 refueling outage, the next scheduled test for Unit 2, that failure would constitute a second consecutive failure following the test failure in the Unit 2 Cycle 3 outage and TVA would be required to take action accordingly. There is no condition on the operation of Unit 2.

III

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances, as provided in 10 CFR 50.12(a)(2)(ii), are present justifying the exemption; namely, that the application of the regulation in the particular circumstances for Unit 2 in the Unit 2 Cycle 4 refueling outage would not serve, and is not necessary, to achieve the underlying purpose of the rule. The application of the regulation is not necessary to assure the integrity of the containment in the event of a postulated design basis loss-of-coolant accident.

Accordingly, the Commission hereby grants an exemption from section III.A.6(b) of appendix J to 10 CFR part 50 for Sequoyah Unit 2.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this Exemption will have no significant impact on the environment. An "Environmental Assessment and Finding of No Significant Impact" related to this Exemption was published in the *Federal Register* (55 FR 34972) on August 27, 1990.

For further details with respect to this action, see the request for exemption dated May 21, 1990, which is available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC, and at the Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

This Exemption is effective upon issuance.

Dated at Rockville, Maryland, this 27th day of August, 1990.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 90-20805 Filed 9-4-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-397]

Washington Public Power Supply System; Withdrawal of Application for Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Washington Public Power Supply System (the licensee) to withdraw its March 2, 1990,

application for proposed amendment to Facility Operating License No. NPF-21 for the WPPSS Nuclear Project Unit No. 2, located in Benton County, Washington.

The proposed amendment would have revised the action statements which govern testing of the three emergency diesel generators.

The Commission has previously issued a Notice of Consideration of Issuance of Amendment published in the *Federal Register* on April 4, 1990 (55 FR 12604). However, by letter dated August 20, 1990, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated March 2, 1990, and the licensee's letter dated August 20, 1990, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and the Richland Public Library, 955 Northgate Street, Richland, Washington 99352.

Dated at Rockville, Maryland, this 27th day of August.

For the Nuclear Regulatory Commission.

Patricia L. Eng,

Project Manager, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Regulation.

[FR Doc. 90-20804 Filed 9-4-90; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Announcement of Administrative Careers With America

AGENCY: Office of Personnel Management (OPM).

ACTION: Notice.

SUMMARY: This notice describes examination procedures for Administrative Careers with America (ACWA). Interested parties are invited to submit comments.

DATES: Comments must be received by October 5, 1990.

ADDRESSES: Send or deliver written comments to Leonard R. Klein, Associate Director for Career Entry and Employee Development, Office of Personnel Management, room 6F08, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Tracy Spencer, (202) 606-0960.

SUPPLEMENTARY INFORMATION:**Background**

On April 18, 1990, OPM announced new examinations covering entry-level positions at the GS-5/7 levels which were formerly filled under the Professional and Administrative Careers Examination (PACE). Use of the PACE was terminated in 1982 under the terms of a consent decree in *Luevano v. Devine* (Civil Action No. 79-271). Since then, the positions formerly filled from PACE have been filled either through alternative competitive examinations developed in accordance with the *Luevano* decree or through excepted service appointments under Schedule B. The new examinations, collectively titled Administrative Careers with America (ACWA), replace both the alternative competitive examinations and the Schedule B appointing authority.

The ACWA examinations cover six groups of occupations for which there are written tests and a seventh group with positive education requirements. Applicants for that latter group will be examined using unassembled procedures (i.e., review of applicants' education and experience without a written test).

OPM is implementing this system of examinations pursuant to 5 U.S.C. 3301(2). OPM ordinarily does not publish a notice in the *Federal Register* when examinations are announced. However, because of the unique circumstances which preceded the implementation of the ACWA and because OPM wishes to give the widest possible publicity to the program, OPM takes this opportunity to invite comments from interested members of the public.

Written Tests

The ACWA examinations employ separate written tests for each of six occupational groups: (1) Health, safety and environmental occupations; (2) writing and public information occupations; (3) business, finance and management occupations; (4) personnel, administration, and computer occupations; (5) benefits review, tax, and legal occupations; and (6) law enforcement and investigations occupations. The PACE employed a single written test for all positions. As an interim measure, PACE was replaced by a Schedule B authority and alternative examinations.

The ACWA written tests were developed to avoid some of the problems encountered under the previous tests. The PACE, which measured general knowledge and abilities, was challenged by the *Luevano* plaintiffs for being culturally biased and for measuring knowledge that was not

relevant to the jobs the applicants were being hired to fill. The alternative examinations were job-related, but the costs of developing and administering tests for a single occupation made the process economically feasible only for occupations where there was substantial annual hiring.

The ACWA tests use logic-based questions that measure the math and verbal skills and reasoning ability needed to perform successfully in the types of positions being filled and that relate to situations the applicants would encounter in those jobs. By grouping occupations which call for similar knowledge, skills and abilities, OPM can provide relevant written tests for most of the occupations formerly filled under PACE.

Individual Achievement Record

In addition to the ability test questions, the ACWA written examinations also include a new feature called the Individual Achievement Record (IAR). The IAR evaluates how well applicants have used the opportunities they have had in school, work, and outside activities. It is similar to biodata questionnaires that have been used successfully in private industry, but it excludes any questions about attributes (e.g. parents' educational level) which are not within an applicant's control.

Each applicant's score is based on both the written test and the IAR. The combination of these techniques will provide enhanced prediction of applicants' potential to do well in the occupations covered by ACWA.

Operational Issues

Applicants who meet the qualification requirements and pass one of the six written tests will be placed on a competitive register. Registers for Groups 1 and 2 and Group 7 will be maintained by the OPM Area Offices. Registers for Groups 3 through 6 will be maintained in the OPM Examining Office in Macon, GA. Registers for Groups 3 through 6 for positions in Alaska, Hawaii, and Pacific Overseas areas, and Puerto Rico and the U.S. Virgin Islands will be maintained in OPM Area Offices in Anchorage, Honolulu, and San Juan, respectively.

The next open period for the receipt of applications for the ACWA examinations in Groups 3 through 6 will be from September 17 through October 31, 1990. Each OPM Region will review the status of its current registers for Groups 1 and 2 to determine whether it will be necessary to open the registers at this time. Each OPM Region will be publicizing the open period in its area.

OPM has developed a recruiting brochure which highlights the new examining program. This brochure is available to applicants through OPM area offices and is distributed to college placement offices. A quarterly Competition Notice defining open periods for each occupational group is also available. In addition, OPM has prepared a Qualification Information Statement (QIS) for Groups 1 through 6 which contain procedures on how and where to apply and the qualification requirements for the positions.

Referral and Consideration of Outstanding Scholar Applicants

The *Luevano* decree provides direct-hire authority for 4-year college graduates who have a grade-point average of 3.5 or better, on a 4.0 scale, for all undergraduate course work, or who have graduated in the upper 10 percent of their class. Applicants who qualify under this Outstanding Scholar provision may be recruited and hired by agencies without taking the written test and the IAR. Under ACWA, the same Outstanding Scholar provisions continue to apply.

To date, there has been no systematic process for matching applicants who meet the Outstanding Scholar criteria with agencies which need their skills. Agencies conduct their own recruiting and eligible applicants continue to apply directly to the activities where they would like to work.

OPM is considering using the Automated Applicant Referral System (AARS) for Outstanding Scholar referrals. The AARS would permit the expedited referral of candidates who meet the Outstanding Scholar criteria through use of a touch-tone telephone and a FAX machine to requesting Federal agencies. Outstanding Scholar applicants may, if they wish, register with OPM's Staffing Service Center in Macon, Georgia, indicating their occupational and geographic availability. Agencies wishing to use the service would call the Staffing Service Center for a FAX referral of Outstanding Scholars who are available in the occupations, grades, and geographic locations for which the agency is recruiting.

Applicants on the AARS referral file will have a period of consideration of six months and may be referred on more than one request at a time. Agencies will be requested to notify OPM whenever an applicant is appointed so that the applicant is not referred to other agencies.

Although OPM has not yet implemented the AARS for Outstanding

Scholars, we believe that automated referral will simplify recruiting for both agencies and eligible candidates and will enable agencies to utilize better the Outstanding Scholar Program. Many agencies already conduct on-campus recruiting and applicants already contract the agencies for which they wish to work. However, that process is time-consuming and does not always produce the best match of candidates and jobs nor does it enable agencies effectively to recruit those bright college graduates who are in high demand by private industry.

Effects on Current Operations

OPM alternative examinations have been terminated and eligibles advised of the new examining procedures under ACWA. Agency PAC B hiring authority was terminated on July 1, 1990. Agencies have been authorized to convert appointments of employees serving under Schedule B PAC excepted appointments to competitive service appointments.

Office of Personnel Management.
Constance Berry Newman,
Director.

[FR Doc. 90-20771 Filed 9-4-90; 8:45 am]
BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

August 29, 1990.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Allstate Municipal Income Trust
Common Stock, \$0.01 Par Value (File No. 7-6140)
American Savings Bank
Common Stock, No Par Value (File No. 7-6141)
Arctic Alaska Fisheries Corp.
Common Stock, \$0.01 Par Value (File No. 7-6142)
Crawford & Company
Common Stock, \$1.00 Par Value (File No. 7-6143)
Duke Realty Inv.
Common Stock, \$1.00 Par Value (File No. 7-6144)
Empire District Electric Co.
Common Stock, \$1.00 Par Value (File No. 7-6145)

Franklin Multi Income Trust
Common Stock, \$0.01 Par Value (File No. 7-6146)
Hibernia Corp.
Class "A" Common Stock, No Par Value (File No. 7-6147)
Hormel (Geo. A) & Co.
Common Stock, \$0.2344 Par Value (File No. 7-6148)
MFS Income and Opportunity Trust
Common Stock, No Par Value (File No. 7-6149)
MFS Special Value Trust
Common Stock, No Par Value (File No. 7-6150)
New Germany Fund, Inc.
Common Stock, \$0.001 Par Value (File No. 7-6151)
Nuveen California Performance Plus Muni
Common Stock, \$0.01 Par Value (File No. 7-6152)
Nuveen New York Performance Plus Muni
Common Stock, \$0.01 Par Value (File No. 7-6153)
Potash Corp. of Saskatchewan, Inc.
Common Stock, No Par Value (File No. 7-6154)
Precision Castparts Corp.
Common Stock, No Par Value (File No. 7-6155)
SafeCard Services, Inc.
Common Stock, \$0.01 Par Value (File No. 7-6156)
Time Warner, Inc.
Preferred "C" Stock, \$1.00 Par Value (File No. 7-6157)
Time Warner, Inc.
Preferred "D" Stock, \$1.00 Par Value (File No. 7-6158)
Wedgestone Financial, Inc.
Common Stock, \$1.00 Par Value (File No. 7-6159)
Austria Fund, Inc.
Common Stock, \$0.01 Par Value (File No. 7-6160)
Central Newspapers Inc.
Common Stock, No Par Value (File No. 7-6161)
Colonial Intermarket Income Trust
Common Stock, No Par Value (File No. 7-6162)
Colonial Investment Grade Municipal Trust
Common Stock, No Par Value (File No. 7-6163)
Convex Computer Corp.
Common Stock, \$0.01 Par Value (File No. 7-6164)
Guardsman Products, Inc.
Common Stock, \$1.00 Par Value (File No. 7-6165)
Harken Energy Corp.
Common Stock, \$1.00 Par Value (File No. 7-6166)
Healthsouth Rehabilitation
Common Stock, \$0.01 Par Value (File No. 7-6167)
Kerr Glass Mfg. Corp.
Common Stock, \$0.50 Par Value (File No. 7-6168)
Oregon Steel Mills, Inc.
Common Stock, \$0.01 Par Value (File No. 7-6169)
Perkins Family Restaurants
Common Stock, No Par Value (File No. 7-6170)
Synovus Financial Corp.

Common Stock, \$1.00 Par Value (File No. 7-6171)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 20, 1990, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 90-20858 Filed 9-4-90; 8:45 am]
BILLING CODE 8010-01-M

[Rel. No. 34-28382; File No. SR-CBOE-90-13]

Self-Regulatory Organizations; Filing of Amendments to Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Trading in Certain Unit Investment Trusts

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 30, 1990, and August 21, 1990, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") Amendments Nos. 1 and 2, respectively, to a proposed rule change under Rule 19b-4 which would permit the trading of unit investment trusts and interests in such trusts ("UIT interests").¹ Said amendments are described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

¹ Notice of the proposed rule change was given by publication of Securities Exchange Act Release No. 28132 (June 19, 1990), 55 FR 26038 (June 26, 1990).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposed rule change set forth in SR-CBOE-90-13 amends certain Exchange rules to permit the trading of UIT interests. Amendments Nos. 1 and 2 to the proposed rule change provided clarification that the stock market index on which UIT interests may be based must be a board-based stock market index which is of the type the Commission has previously reviewed and approved for index products and amend the original customer suitability standard proposed for UIT interests, in addition to making some other clarifying amendments. The text of the proposed rule change is available at the Office of the Chairman of the CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The CBOE previously has filed rules with the Commission that would authorize the trading on the Exchange of UIT interests.² Those rules are based, in turn, upon rules previously proposed by the CBOE relating to the trading of stocks, warrants, and other securities instruments and contracts.³

The CBOE previously proposed to amend proposed Rule 30.41, relating to margin requirements, to describe with greater specificity the positions in members' accounts which may be carried on a margin basis that is satisfactory to the member and the carrying broker. Those amendments were proposed initially in SR-CBOE-90-08, and were further refined in Amendments No. 1 and No. 2 to SR-

CBOE-90-08. Proposed Rule 30.41 is now being amended solely to conform its provisions to the language of that Rule as set forth in SR-CBOE-90-08.

Existing CBOE Rule 9.10 governs a member organization's exercise of discretionary authority with respect to options transactions in a customer's account. Proposed Rule 30.50(e), in turn, sets forth standards governing the exercise of discretion with respect to securities other than options. Interpretation and Policy .04 to proposed Rule 30.50 provides that discretionary transactions in index warrants are to be governed by CBOE Rule 9.10. That Interpretation and Policy is now being amended to provide that discretionary transactions in UIT interests also will be subject to the provisions of CBOE Rule 9.10 rather than the provisions of proposed Rule 30.50(e).

Proposed Rule 31.94 is being amended to correct a typographical error relating to the redesignation of Rule 31.94(E) as Rule 31.94(F).

The CBOE previously has proposed listing standards for UIT interests. As proposed, Rule 31.5(G) would have authorized the listing of UIT interests that among other things, were based on a portfolio of stocks included in a stock market index. The CBOE is now amending that Rule to make clear that this portion of the Rule authorized the listing of UIT interests only where the stock market index in which the stocks in the portfolio are included is a broad-based stock market index that is of the type the SEC has previously reviewed and approved for index products.

Interpretation and Policy .03 to proposed Rule 30.50 is being amended to provide that customers should be given an explanation of any special characteristics and risks attendant to trading UIT interests, and the Exchange will circulate to its membership information describing any such characteristics and risks before trading commences in a UIT interest.

Proposed Interpretation and Policy .03 is also being amended to provide that before a member organization, or an officer, partner or employee of that member organization recommends a transaction in the component securities resulting from the subdivision or separation of any UIT interest or in units that may be divided into such component securities, such member organization, officer, partner or employee should make a determination that such component securities or units are not unsuitable for the customer, and should have a reasonable basis for believing that the customer has such knowledge and experience in financial

matters that he may reasonably be expected to be capable of evaluating the risks and special characteristics, and is financially able to bear the risks, of the recommended transaction and constituent securities.

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act in general, and furthers the objectives of section 6(b)(5) in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the *Federal Register* or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (a) By order approve such proposed rule change, or
- (b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that

² File No. SR-CBOE-90-13.

³ File No. SR-CBOE-90-13-08. This rule filing was noticed for comment in Securities Exchange Act Release No. 28015 (May 14, 1990), 55 FR 21280 (May 23, 1990).

may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 26, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁴

Dated: August 28, 1990.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 90-20851 Filed 9-4-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-28381; File No. SR-NASD-89-10]

**Self-Regulatory Organizations;
Amendment to Proposed Rule Change
by the National Association of
Securities Dealer, Inc. Relating to
Members Handling of Customer Limit
Orders**

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 9, 1990, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") an amendment to proposed rule change File No. SR-NASD-89-10 as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's
Statement of the Terms of Substance of
the Proposed Rule Change**

The National Association of Securities Dealers, Inc. ("NASD" or "Association") is herewith submitting amendments to proposed new section 45 to Article III of the NASD Rules of Fair Practice. The proposed new section would set forth the obligations of member firms that accept customer limit orders and continue their own market making activities in the security which is the subject of the limit order. The rule would also provide a model statement that the NASD deems to constitute adequate disclosure to customers of the

fact that the firm may accept a limit order but not grant that order priority over its own market making activities.

**II. Self-Regulatory Organization's
Statement of the Purpose of and
Statutory Basis for, the Proposed Rule
Change**

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Section (A), (B) and (C) below, of the most significant aspects of such statements.

**A. Self-Regulatory Organization's
Statement of the Purpose of, and
Statutory Basis for, the Proposed Rule
Change**

The purpose of the proposed rule change is to provide guidance for NASD member firms with respect to the handling of customer limit orders by a firm that is conducting both market-making and retail activities. In *Notice to Members 85-12* (February 15, 1985), the NASD set forth its views that, on accepting a customer limit order, a member undertakes a fiduciary obligation and cannot trade for its own account at prices more favorable than the customer limit order unless there is an understanding by the customer as to the priorities that will govern the order. At the time the association issued *Notice to Members 85-12*, the NASD contemplated an amendment to the Rules of Fair Practice that would codify this position. Because an appeal of an NASD disciplinary action involving this issue was pending, however, the NASD did not proceed with such rule making. The Commission ruled in that disciplinary action and affirmed the conclusion reached by the NASD. See *In the Matter of E. F. Hutton & Co.*, Exchange Act Release No. 25887 (July 6, 1988). The NASD Board, therefore, determined that it was appropriate to provide guidance to NASD member firms as to the type of communication with customers that would satisfy member firms' obligations with respect to the handling of customer limit orders. To this end, the NASD set forth a proposal in *Notice to Members 89-39* (May 1989). Based upon concerns raised by the SEC staff relating to the form and frequency of the disclosure contemplated by the 1989 proposal, the NASD Board of Governors decided to

make certain modifications to the rule as previously proposed.

The proposed rule change, in its amended form, (the "new rule") provides that each member that accepts and holds an unexecuted customer limit order, and anticipates continuing to trade in the security that is the subject of this order for its own market-maker account at prices equal to or better than the limit price shall not be deemed to have acted in a manner inconsistent with Article III, section 1 of the Rules of Fair Practice if it provides a separate written statement to each existing customer at the time the new rule is adopted and to each new customer upon the opening of an account, clearly disclosing the circumstances under which the firm accepts limit orders and the policies and procedures followed by the firm in handling those orders. It is expected that the new rule will provide necessary guidance to NASD members on what steps they must take to ensure that customers placing limit orders with a firm are treated in a manner consistent with that firm's obligations under Article III, section 1 of the Rules of Fair Practice.

The new rule further provides that additional disclosure shall be provided in the form of a separate statement that is either distributed annually or enclosed with confirmations of limit-order transactions. The text of a model disclosure statement that the NASD deems to constitute adequate disclosure of the fact that a firm may accept a limit order but not grant the order priority over its own market-making activities is also included. Lastly, the new rule requires that non-standardized disclosure documents be filed with the NASD at or before the time they are first used. The documents will not be pre-approved, but will be reviewed for compliance.

The NASD believes that the new rule is consistent with the provisions of section 15A(b)(6) of the Act which require the rules of the Association to promote just and equitable principals of trade and, in general, to protect investors and the public interest insofar as the rule is designed to ensure that customers will more readily understand the terms and conditions under which member firms will accept and execute transactions in the customer's accounts.

**B. Self-Regulatory Organization's
Statement on Burden on Competition**

The NASD does not believe that the proposed rule change, in its amended form, will result in any burden on competition that is not necessary or

⁴ 17 CFR 200.30-3(a)(12) (1989).

appropriate in furtherance of the purposes of the Securities Exchange Act of 1934, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

- A. By order approve such proposed rule change, or
- B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by September 26, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: August 28, 1990.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 90-20852 Filed 9-4-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-28389; File No. SR-NASD-89-53]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Requalification by Examination for Persons Whose Registration Has Been Revoked Under NASD Rules of Fair Practice

The National Association of Securities Dealers, Inc. ("NASD" or "Association") submitted on November 22, 1989, to the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder.² The proposal amends Schedule C to the NASD By-Laws³ to require a person whose registration with the NASD has been revoked for failure to pay any fine, monetary sanction or costs assessed as a result of a disciplinary action by the NASD⁴ to requalify by examination prior to again becoming registered.

Prior to the instant rule filing, the NASD would attempt to collect fines by sending several payment requests to the person who had been fined. When the money was not forthcoming, the NASD would revoke the person or member's registration. The NASD's objective for SR-NASD-89-53 is to play a role in strengthening its fine collection policy and procedures.⁵ The NASD believes that the requirement that a person requalify by examination if his registration(s) is revoked will serve to encourage the prompt payment of fines and costs levied in NASD disciplinary proceedings. Currently, NASD members are required to requalify by examination only when their most recent registration as a representative or principal has been terminated for a period of two years or more.⁶

¹ 15 U.S.C. 78s(b)(1) (1982).

² 17 CFR 240.19b-4 (1989).

³ NASD Manual, Schedule to the By-Laws, ¶ 1784, ¶ 1785.

⁴ See NASD Manual, Rules of Fair Practice, Article V, section 2, ¶ 2302. The NASD may revoke the registration of a member or a person associated with a member for failure to pay a fine or monetary sanction imposed in the administration and enforcement of the Rules of Fair Practice or for failure to pay for any costs assessed in connection with such imposition.

⁵ In connection with SR-NASD-89-53, the NASD has also set forth its policy relating to the collection of fines and costs in Disciplinary Proceedings. The Association has indicated that it will continue its own internal efforts for the collection of fines, and if such efforts fail, a matter may be referred to external collection agencies and in appropriate situation, the NASD will seek to reduce such fines to a judgment. See Securities Exchange Act Release No. 28227 (July 18, 1990), 55 FR 30336 (July 25, 1990).

⁶ See NASD Manual, Schedule C to the By-Laws, ¶ 1785.

Notice of the full text of the proposed rule change was provided by the issuance of a Commission release (Securities Exchange Act Release No. 28226, July 18, 1990) and by publication in the **Federal Register** (55 FR 30337, July 25, 1990). No comments were received on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD. In particular, section 15A(b)(7)⁷ requires, in part, that the rules of the Association provide that its members and person associated with its members be appropriately disciplined for violation of any provision of the Act or the rules of the NASD by *inter alia*, fine, censure, or any other fitting sanction. The Commission believes that the compulsory requalification by examination is an appropriate sanction in that it will facilitate the prompt payment of fines and monetary sanctions, thus buttressing the significance of such impositions; and hopefully adding a degree of deterrence to the disciplinary proceeding process.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.⁸

Dated: August 28, 1990.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 90-20853 Filed 9-4-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-28391; File No. SR-NASD-90-18, Amt. 2]

Self-Regulatory Organizations; Amendment to Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Criteria for Inclusion of Securities in the NASDAQ System

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 7, 1990 the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") a second amendment to the proposed rule change as described in Items I, II, and III below, which Items have been prepared

⁷ 15 U.S.C. 78o-3 (1982).

⁸ 17 CFR 200.30-3(a)(12).

by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is filing herewith Amendment No. 2 to SR-NASD-90-18 previously filed with the Commission.¹ Below is the text of the proposed amendment. Proposed new language is italicized; proposed deletions to the language originally filed as SR-NASD-90-18 are in brackets.

Part II—Qualification Requirements for NASDAQ Securities

Sec. 1. Qualification Requirements for Domestic and Canadian Securities

(c)(4) For initial inclusion common or preferred stock shall have a minimum bid price of \$3 per share. For continued inclusion the minimum bid price per share shall be \$1[,] *provided however that an issuer shall not be required to maintain the \$1 per share minimum bid price if it maintains market value of public float of \$1 million and \$2 million in capital and surplus.*

[(7) A failure to meet the continued inclusion requirements for number of market makers, market value of public float and minimum bid price per share shall be determined to exist only if the deficiency for the applicable criterion continues for a period of 10 consecutive business days. Upon such failure, the issuer shall be notified promptly and shall have a period of 90 calendar days from such notification to achieve compliance with the applicable initial inclusions standards.]

(7)a. *A failure to meet the continued inclusions requirements for number of market makers shall be determined to exist only if the deficiency continues for a period of 10 consecutive business days. Upon such failure, the issuer shall be notified promptly and shall have a period of 30 calendar days from such notification to achieve compliance with the applicable continued inclusions standard.*

(7)b. *A failure to meet the continued inclusion requirements for minimum bid price and market value of public float shall be determined to exist only if the deficiency for the applicable criterion continues for a period of 10 consecutive business days. Upon such failure, the issuer shall be notified promptly and shall have a period of 90 calendar days from such notification to achieve compliance with the applicable continued inclusion standard.*

* * * * *

Sec. 2. Qualification Requirements for non-Canadian Foreign Securities and American Depositary Receipts.

(e)(1) For initial and continued inclusions, the issuer shall have two registered and active market makers. A failure to meet the continued inclusions requirement for number of market makers shall be determined to exist only if the deficiency continues for a period of 10 consecutive business days. [Upon such failure the issuer shall be notified promptly and shall have a period of 90 calendar days from such notification to achieve compliance with the market maker requirement.] *Upon such failure the issuer shall be notified promptly and shall have a period of 30 calendar days from such notification to achieve compliance with the market maker requirement.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed amendment, adopted pursuant to Article VII, section 1(a)(6) of the NASD By-Laws, makes the following changes to previously proposed SR-NASD-90-18:

(1) Companies falling below the proposed \$1.00 per share minimum price may continue to qualify for NASDAQ listing if they maintain \$1 million in market value of public float and \$2 million in capital and surplus,

(2) Companies falling below the continued inclusion criteria (the "maintenance criteria") would be able to requalify for inclusion in NASDAQ by meeting maintenance criteria rather than initial inclusion standards (the "entry standards").

(3) The proposed amendment would reduce from 90 calendar days to 30 calendar days the period that issuers have to achieve compliance after notification of failure to meet the maintenance criteria for number of market makers, and

(4) The proposal changes the effective date for application of the revised maintenance criteria to the later of July 1, 1991 or six months after Commission approval of the standards.

The instant proposed amendment resulted from a review by the NASD Board of Governors ("Board") of comment letters received by the Commission in response to the new criteria for inclusion of securities in the NASD system, as set out in SR-NASD-90-18. After consideration, the Board determined that comments on entry standards were unpersuasive,² but agreed that comments on the maintenance standards raised several valid points.

The NASD recognizes that at times companies experience temporary adverse market conditions that cause the share price of their security to fall below \$1.00 without having a serious impact on the health of the company, or its status as an NASDAQ company. Thus, the NASD is proposing to allow companies that fail to meet continued inclusion requirements of NASDAQ for minimum bid price to continue to qualify if they maintain a \$1 million market value of public float and \$2 million in capital and surplus.

Similarly, the NASD has determined that it is more equitable to allow companies that have fallen below NASDAQ maintenance criteria to requalify for NASDAQ listing by meeting the applicable maintenance criteria rather than the applicable entry standards, as was originally proposed. Additionally, the NASD considers 30 days to be an adequate time frame for achieving compliance with the number of market makers required by the maintenance criteria; as originally proposed, SR-NASD-90-18 allowed companies 90 days to meet the maintenance criteria for a number of market makers when failing to meet such criteria for a period of 10 consecutive days.

Further, the NASD is currently proposing that the changes to the maintenance criteria will be made effective on the latter of July 1, 1991 or six months after Commission approval of the standards. The NASD believes that it is appropriate to have the maintenance criteria take effect subsequent to the 1991 annual meeting "season" so as to allow companies to make any necessary changes without convening special meetings of shareholders. The changed effective date also reflects the current operation

² The NASD responded to the principal concerns expressed in the public comments to the Commission. See letter from T. Grant Callery, Vice President and Deputy General Counsel, NASD to Katherine A. England, Branch Chief, Division of Market Regulation, SEC, dated July 26, 1990 available for examination in the Commission's public reference room.

¹ See Securities Exchange Act Release No. 27906 (April 13, 1990), 55 FR 15052 (April 20, 1990), giving notice of the proposed rule change as amended by Amendment No. 1.

of the OTC Bulletin Board Service ("Service" or "Bulletin Board"), which the continued inclusion criteria was contingent upon in the original filing.

The NASD believes the proposed rule change is consistent with section 15A(b)(6) of the Act and Rule 15c2-6³ thereunder. In pertinent part, section 15A(b)(6) mandates that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, perfect the mechanism of a free and open market and a national market system, protect investors and the public interest; and not be designed to permit unfair discrimination between issuers. Further, the NASD believes that the amended proposal is consistent with section 15A(b)(6)(11) of the Act in that the application of the inclusion and maintenance criteria will produce fair and informative quotations for securities, and prevent fictitious or misleading quotations. The NASD believes that the standards being proposed reflect levels of issuer size and investor interest consistent with inclusion in a nationwide securities market such as NASDAQ.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change, as amended, may result in certain NASDAQ companies being deleted from the System. In addition, certain issuers which would qualify under the existing initial inclusion requirements may not qualify under the proposed inclusion requirements. The proposal may, therefore, have an adverse impact on those issuers. The Association believes, however, that the benefits to the investing public to be derived from the increased standards substantially outweigh any such detriment.

The NASD has addressed this issue in several ways. First, the NASD intends to delay the effectiveness of the increased continued inclusion criteria until the later of July 1, 1991 or six months after Commission approval of the standards so as to allow existing NASDAQ issuers a reasonable period of time to take appropriate action to remedy any deficiencies which may exist.

Additionally, the NASD has provided, through the OTC Bulletin Board Service, an alternative trading medium for companies which are not eligible for NASDAQ inclusion or which may be deleted from the System. The Service is currently providing a viable market for issuers having securities that are not included in the NASDAQ system (the OTC Bulletin Board Service operates on a real-time basis allowing member firms, for the first time, to enter, update and view quotation information on OTC securities which are not included in the NASDAQ system).

The NASD has also considered the effect the proposed rule change will have on the capital formation process. It is unquestioned that inclusion in the NASDAQ system aids in the capital formation process. However, this should not impede the ability of the NASD to impose meaningful standards for the inclusion and continued inclusion of securities in a credible marketplace. Such credibility is most important to the capital formation process and the proposed increased standards will have the effect of further enhancing such credibility. In addition, there are currently in excess of 10,000 securities which are publicly traded and regularly quoted outside of the NASDAQ and exchange markets which have, at some point, accessed the public capital markets without seeking inclusion in NASDAQ or an exchange. In its discussions of this issue, the Board noted that traditional sources for financing of small companies have included, among other alternatives, private placements, venture capital investments and offerings under Regulation A⁴ all of which are still available. There is no reason to believe that such access to capital will not continue, and even be enhanced through the increased visibility of the Bulletin Board.

Finally, the procedures for obtaining exceptions to the qualification requirements pursuant to the NASD's Schedule to the By-Laws⁵, the procedural safeguards provided by the NASD's Code of Procedure⁶ and review of such determinations by the Commission will continue to be available to the affected issuers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

- A. By order approve such proposed rule change, or
- B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comment

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying [in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying] at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by [insert date 21 days from the date of publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: August 29, 1990.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 90-20854 Filed 9-4-90; 8:45 am]

BILLING CODE 8010-01-M

³ 17 CFR 240.15c2-6. Rule 15c2-6 prescribes sales practice requirements for certain low-price securities as a means to prevent fraudulent, deceptive, or manipulative acts or practices by brokers or dealers. The NASD believes that SR-NASD -90-18, as amended, appropriately addresses the concerns raised by the Division of Market Regulation regarding potential attempts to circumvent the requirements of the rule. See letter to Joseph H. Hardiman, President, NASD from Richard G. Ketchum, Director, Division of Market Regulation dated January 10, 1990.

⁴ 17 CFR 230.251 *et seq.* Regulation A provides for an exemption from registration for certain qualified securities offerings.

⁵ NASD Manual, Schedule D, part II, section 3, 1805.

⁶ NASD Manual, Code of Procedure, Article IX, § 3101.

[Rel. No. 34-28384; International Series Rel. No. 145; File No. SR-PSE-90-30]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to the Time Period for the Waiver of Transaction Fees and Charges for Index Warrants on the FT-SE 100

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 14, 1990, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the Schedule of Rates and Charges published by the Exchange, the PSE will waive all transaction fees and charges for two Solomon Brothers, Inc. index warrants on the Financial Times-Stock Exchange 100 Stock Index ("FT-SE 100"). The duration of this fee and charge waiver shall cover the time period beginning July 9, 1990 through October 9, 1990. The present rule filing supplements Securities Exchange Act Release No. 28243 (July 20, 1990), 55 FR 30779 (order approving file no. SR-PSE-90-27), which did not specify the duration of the fee and charge waiver regarding FT-SE 100 warrants.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Although the Exchange believes that its specialists will provide excellent markets in FT-SE 100 index warrants, the PSE is of the opinion that a three month waiver for certain fees and charges is necessary to remain on a competitive footing with the other exchanges. This waiver of transaction fees and charges will encourage trading decisions on the basis of the strength of the marketplace.

The Exchange believes that the proposed rule change is consistent with section 6(b)(5) of the Act in that it will increase competition and the quality of markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PSE does not believe that the proposed rule change will impose an inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Since the proposed rule change concerns changing a fee or other charge imposed by the PSE, it has become effective immediately upon filing pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 thereunder.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed

rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 26, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 28, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-20855 Filed 9-4-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-28383; File No. SR-PHLX-90-04]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Foreign Currency Option Quote Spread Parameters

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 31, 1990, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX proposes to amend Exchange Rule 1014(c)(ii) and Floor Procedure Advice F-6 to revise the quote spread parameters in effect during all trading segments for option contracts on the British pound, German mark, Swiss franc, Australian dollar, European Currency Unit ("ECU"), and Japanese yen.¹

¹ The PHLX has explained that due to a typographical error made during the process of amending Exchange Rule 1014(c)(ii) in 1986, certain quote spread parameters were reprinted incorrectly in the Exchange's rule book. The incorrect quote

Continued

For option contracts on the British pound Exchange Rule 1014(c)(iii), as amended, would narrow the Exchange's maximum quote spread parameters by (i) reducing, from \$.0020 to \$.0015, the maximum difference between the bid and the offer for option contracts where the bid is \$.0250 or less; (ii) reducing, from \$.0040 to \$.0025, the maximum difference between the bid and the offer for option contracts where the bid exceeds \$.0250 but does not exceed \$.0750; and (iii) reducing, from \$.0060 to \$.0035 the maximum difference between the bid and the offer for option contracts where the bid exceeds \$.0750. In addition to narrowing the quote spread parameters, the proposal would change the contract bid price in each of the three categories, so that the first category would include option contracts for which the bid is \$.0250 or less, rather than \$.0200 or less; the second category would include option contracts where the bid is greater than \$.0250, rather than \$.0200, up to \$.0750, rather than \$.0800; and the third category would include contracts where the bid exceeds \$.0750 rather than \$.0800.

For option contracts on the German mark and Swiss franc, Exchange Rule 1014(c)(ii) would be amended to narrow the Exchange's maximum quote spread parameters by (i) reducing, from \$.0008 to \$.0006, the maximum difference between the bid and the offer for option contracts where the bid exceeds \$.0040 but does not exceed \$.0160; and (ii) reducing, from \$.0012 to \$.0008, the maximum difference between the bid and the offer for option contracts where the bid exceeds \$.0160.

For option contracts on the Australian dollar and the ECU, Exchange Rule 1014(c)(ii), as amended, would broaden the Exchange's maximum quote spread parameters by (i) increasing, from \$.0004 to \$.0005 the maximum difference between the bid and the offer for option contracts where the bid is \$.0050 or less; (ii) increasing, from \$.0008 to \$.0010 the maximum difference between the bid and the offer for option contracts where the bid exceeds \$.0050 but does not exceed \$.0200; and (iii) increasing, from \$.0012 to \$.0015 the difference between

the bid and the offer for option contracts where the bid exceeds \$.0200. In addition to broadening the quote spread parameters, the proposal would change the contract bid price in each of the three categories so that the first category would include option contracts where the bid is \$.0050 or less, rather than \$.0040 or less; the second category would include option contracts where the bid exceeds \$.0050, rather than \$.0040, but does not exceed \$.0200, rather than \$.0160; and the third category would include option contracts where the bid exceeds \$.0200 rather than \$.0160.

For option contracts on the French franc, Exchange Rule 1014(c)(ii), as amended, would narrow the Exchange's maximum quote spread parameters by (i) reducing, from \$.0002 to \$.00015, the maximum difference between the bid and the offer for option contracts where the bid is \$.00250² or less; (ii) reducing, from \$.00040 to \$.00025, the maximum difference between the bid and the offer for option contracts where the bid exceeds \$.00250 but does not exceed \$.00750; and (iii) reducing, from \$.00060 to \$.00035 the maximum difference between the bid and the offer for option contracts where the bid exceeds \$.00750. In addition to narrowing the quote spread parameters, the proposal would change the contract bid price in each of the three categories so that the first category would include option contracts where the bid is \$.00250 or less, rather than \$.0020 or less; the second category would include option contracts where the bid exceeds \$.00250, instead of \$.0020, but does not exceed \$.00750, rather than \$.0080; and the third category would include option contracts where the bid exceeds \$.00750 rather than \$.0080.

For option contracts on the Japanese yen, Exchange Rule 1014(c)(ii), as amended, would narrow the Exchange's quote spread parameters by (i) reducing, from \$.000008 to \$.000006, the maximum difference between the bid and the offer for option contracts where the bid is greater than \$.000040 but does not exceed \$.000160; (ii) reducing, from \$.000012 to \$.000008, the maximum difference between the bid and the offer for option contracts where the bid exceeds \$.000160.

The proposal makes corresponding changes in option quote parameters under PHILX Floor Procedure F-6.

I. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Exchange Rule 1014(c)(ii) requires that specialists and Registered Options Traders maintain a specified minimum differential (or spread) between their bids and offers on foreign currency option contracts. The purpose of the proposed rule change is to adjust maximum quotation spread parameters for foreign currency options during all trading segments. The proposed changes include a narrowing of quote spread parameters for options on the German mark, Swiss franc, Japanese yen, British pound and French franc, and a widening of the parameters for options on the ECU and Australian dollar.

The Exchange believes that these proposed changes are necessary for the PHILX to remain competitive and to attract new business. The narrower currency quotes will benefit foreign currency options customers. In addition, the PHILX believes that it is appropriate to set the Exchange's quote spread parameters for the ECU and the Australian dollar at levels corresponding with the parameters typically used in the over-the-counter market for options. The PHILX notes that according to its trading data, the trading volumes in the Australian dollar and the ECU have been significantly lower than the volume in the more active currencies—the German mark and the Swiss franc—for which the spread parameters are being narrowed. The proposal reflects the Exchange's continued commitment to making quality markets in the products it trades.

The PHILX believes that the proposal is consistent with the requirements of the Act because the proposed rule change may be expected to promote the maintenance of fair and orderly markets. The PHILX believes that the

spread parameters list the parameters for options on the German mark, Swiss franc, ECU and Australian dollar as ".0004-.0005-.0006." The correct quote spread parameters for these foreign currency options, however, are ".0004-.0008-.0012." See Securities Exchange Act Release No. 23945 (December 30, 1986), 52 FR 633 (order approving File No. SR-PHILX-86-38). In addition, the parameters for options on the Japanese yen were printed incorrectly as ".000004-.000005-.000006," and should have read ".000004-.000008-.000012." See also letter from Edith Helman, Philadelphia Stock Exchange, to Thomas Gira, Branch Chief, SEC, dated July 27, 1990.

² The Exchange amended a typographical error in the original filing so that the contract bid price for this category is \$.00250. See letter from Edith Helman, Philadelphia Stock Exchange, to Yvonne Fraticelli, Staff Attorney, SEC, dated August 15, 1990.

proposal is consistent with section 6(b)(5) of the Act in particular because the proposed rule change is designed to promote just and equitable principles of trade and to protect the investing public.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the *Federal Register* or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (a) By order approve the proposed rule change, or
- (b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20594. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC.

Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 26, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 28, 1990.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 90-20856 Filed 9-4-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-28385; International Series Rel. No. 146; File No. SR-PHLX-90-25]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Listing of Index Warrants Based on the CAC-40 Index

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 13, 1990, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX is proposing to trade on a listed as well as Unlisted Trading Privilege ("UTP") basis index warrants based on the CAC-40 Index. The CAC is a broad-based, capitalization-weighted index of 40 French companies trade on the Societe des Bourses Francaises ("SBF"). In accordance with the requirements set forth in Securities Exchange Act Release No. 28266 (July 26, 1990), 55 FR 31275 ("index warrant approval order"), the PHLX has submitted this filing pursuant to Rule 19b-4 under the Act to obtain Commission approval to list these warrants.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the

most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In the index warrant approval order, the Commission approved amendments to the PHLX's rules permitting the listing of index warrants based on established market indexes, foreign and domestic.

In approving the aforementioned amendments, the Commission expressed interest in the impact of additional index products on U.S. markets, and stated that the PHLX would be required to submit for Commission approval any specific index warrants that it proposed to trade. The PHLX is now proposing to list index warrants based on the CAC-40 Index, an internationally recognized, capitalization-weighted index consisting of 40 leading stocks listed and traded on the Paris Bourse. The CAC-40 is a widely used indicator of the performance of the French Equity Market, consisting of 40 blue chip stocks with substantial market capitalization, which is calculated and managed by the Societe des Bourses Francaises ("SBF").

Such index warrant issues will conform to the amended PHLX listing requirements set forth in the generic index warrant approval order, which provide that (1) the issuer shall have assets in excess of \$100,000,000; (2) minimum public distribution of 1,000,000 warrants with a minimum of 400 public holders of those warrants; and (3) an aggregate market value of \$4,000,000; or, warrants which have already been approved for trading on another national securities exchange.

CAC-40 Index warrants will be direct obligations of their issuer subject to cash-settlement during their term, and either exercisable throughout their life (i.e., American style) or exercisable only on their expiration date (i.e., European style). Upon exercise, or at the warrant expiration date (if not exercisable prior to such date), the holder of a warrant structured as a "put" would receive payment in U.S. dollars to the extent that the CAC-40 Index has declined below a pre-stated cash settlement value. Conversely, holders of a warrant structured as a "call" would, upon exercise or at expiration, receive payment in U.S. dollars to the extent that the CAC-40 Index has increased above the pre-stated cash settlement value. If "out-of-the-money" at the time of expiration, the warrants would expire worthless.

The PHLX has proposed suitability standards applicable to

recommendations to customers of index warrants and transactions in customer accounts. The Exchange recommends that the warrants be sold only to investors whose accounts have been approved for options trading. If, however, a member or member organization undertakes to effect a transaction in warrants for a customer whose account has not been so approved, such member or member organization must make a careful determination that such warrants are suitable for such customer in conformity with amended PHLX Rule 1026 ("Suitability Rule"). In addition, prior to trading in each particular index warrant, the PHLX proposes to distribute to its membership a circular describing the risks associated with trading in such index warrants.

The Exchange further requires, consistent with its proposal to list index warrants, that a Senior Registered Options Principal ("SROP") or a Registered Options Principal ("ROP") approve and initial a discretionary order in index warrants on the day the order is entered. The SROP will also be required to review the acceptance of each discretionary account to determine that the ROP had a reasonable basis to believe that the customer was able to understand and bear the risks of the proposed transactions, thus ensuring that investors will be offered an explanation of the special characteristics and rules applicable to the trading of index warrants.¹

The Commission notes that with respect to foreign index warrants, there should be an adequate mechanism for sharing surveillance information with respect to the index's component stocks (i.e., the sharing of surveillance information between the PHLX and the exchange on which the index's component stocks are traded). Accordingly, the PHLX is currently negotiating with representatives of the Paris Bourse to secure a mutual surveillance information sharing agreement with respect to reviewing trading in securities underlying the CAC-40 Index.

The Exchange believes that the proposed rule change is consistent with the requirements of the Act, and, in particular, section 6(b)(5), as the CAC-40 warrants are designed to promote just and equitable principles of trade and serve to facilitate transactions in securities by offering an innovative financing technique for issuers as well as the opportunity for U.S. warrant

purchasers to hedge against or speculate on stock market fluctuations in France. In addition, the proposed rule change is consistent with that portion of section 6(b)(5) providing that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices and to remove impediments to and perfect the mechanism of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose an inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (a) By order approve such proposed rule change, or
- (b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the abovementioned self-regulatory

organization. All submissions should refer to the file number in the caption above and should be submitted by September 26, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 28, 1990.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 90-20857 Filed 9-4-90; 8:45 am]

BILLING CODE 8010-01-M

[File No. 500-1]

Order of Suspension of Trading, American Hi-Tech Corp.

August 30, 1990.

It appears to the Securities and Exchange Commission that there is a lack of adequate current information concerning the securities of American Hi-Tech Corporation ("Hi-Tech") and that questions have been raised about the adequacy and accuracy of publicly disseminated information concerning, among other things, Hi-Tech's financial condition, its assets, liabilities and equity, its current and anticipated business operations, and other matters. The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of Hi-Tech.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the common stock of Hi-Tech, over-the-counter or otherwise, is suspended for the period from 9:30 a.m. (EDT) on August 30, 1990 through 11:59 p.m. (EDT) on September 8, 1990.

By the Commission.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 90-20859 Filed 9-4-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17703; 812-7581]

Colonial Advanced Strategies Gold Trust, et al.; Application

August 28, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("the Act").

APPLICANTS: Colonial Advanced Strategies Gold Trust; Colonial California Tax-Exempt Trust; Colonial Corporate Cash Trust I; Colonial Corporate Cash Trust II; The Colonial

¹ See Amended PHLX Rule 1027 ("Discretionary Accounts").

Fund; Colonial Government Securities Plus Trust; Colonial Growth Shares Trust; Colonial/Hancock Liberty Trust; Colonial High Income Municipal Trust; Colonial High Yield Securities Trust; Colonial Income Trust; Colonial InterMarket Income Trust I; Colonial Intermediate High Income Fund; Colonial International Equity Index Trust; Colonial Investment Grade Municipal Trust; Colonial Massachusetts Tax-Exempt Trust; Colonial Michigan Tax-Exempt Trust; Colonial Minnesota Tax-Exempt Trust; Colonial Money Market Trust; Colonial Municipal Income Trust; Colonial New York Tax-Exempt Trust; Colonial Ohio Tax-Exempt Trust; Colonial Small Stock Index Trust; Colonial Strategic Income Trust; Colonial Tax-Exempt Money Market Trust; Colonial Tax-Exempt Trust; Colonial United States Equity Index Trust; Colonial U.S. Government Trust; Colonial Value Investing Portfolios—Equity Portfolio; Colonial Value Investing Portfolios—Income Portfolio.

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from the provisions of section 12(d)(3) and Rule 12d3-1.

SUMMARY OF APPLICATION: Applicants seek a conditional order permitting them to invest in equity and convertible debt securities of foreign issuers that, in each of their most recent fiscal years, derived more than 15 percent of their gross revenues from their activities as broker, dealer, underwriter or investment adviser ("foreign securities companies") in accordance with the conditions of the proposed amendments to Rule 12d3-1.

FILING DATE: The application was filed on August 22, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 25, 1990, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, One Financial Center, Boston, MA 02111.

FOR FURTHER INFORMATION CONTACT: Jeremy N. Rubenstein, Branch Chief, at (202) 272-3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. Each applicant is a management investment company registered under the Act and managed by Colonial Management Associates, Inc., a Massachusetts corporation. Applicants request that any order issued on the application also apply to any other registered investment company or series thereof for which Colonial Management Associates, Inc. or an affiliate thereof acts as investment adviser or principal underwriter.

2. Applicants seek to be able to diversify their portfolios further by being permitted to invest in foreign issuers that, in their most recent fiscal year, derived more than 15 percent of their gross revenues from their activities as a broker, dealer, underwriter, or investment adviser. Those applicants that do not currently invest in foreign issuers wish to be able to diversify their portfolios as described above if, in the future, their investment policies permit them to invest in foreign issuers.

3. Applicants seek relief from section 12(d)(3) of the Act and Rule 12d3-1 thereunder to invest in securities of foreign securities companies to the extent allowed in the proposed amendments to Rule 12d3-1. See Investment Company Act Release No. 17096 (Aug. 3, 1989), 54 FR 33027 (Aug. 11, 1989). Proposed amended Rule 12d3-1 would, among other things, facilitate the acquisition by applicants of equity securities issued by foreign securities companies. Applicants' proposed acquisitions of securities issued by foreign securities companies will satisfy each of the requirements of proposed amended Rule 12d3-1.

Applicants' Legal Conclusions

1. Section 12(d)(3) of the Act prohibits an investment company from acquiring any security issued by any person who is a broker, dealer, underwriter, or investment adviser. Rule 12d3-1 under the Act provides an exemption from section 12(d)(3) for investment companies acquiring securities of an issuer that derived more than 15 percent of its gross revenues in its most recent

fiscal year from securities-related activities, provided the acquisitions satisfy certain conditions set forth in the rule. Subparagraph (b)(4) of Rule 12d3-1 provides that "any equity security of the issuer * * * [must be] a 'margin security' as defined in Regulation T promulgated by the Board of Governors of the Federal Reserve System." Since a "margin security" generally must be one which is traded in the United States markets, securities issued by many foreign securities firms would not meet this test. Accordingly, applicants seek an exemption from the "margin security" requirements of Rule 12d3-1.

2. Proposed amended Rule 12d3-1 provides that the "margin security" requirement would be excused if the acquiring company purchases the equity securities of foreign securities companies that meet criteria comparable to those applicable to equity securities of United States securities-related businesses. The criteria, as set forth in the proposed amendments, "are based particularly on the policies that underlie the requirements for inclusion on the list of over-the-counter margin stocks." Investment Company Act Release No. 17096 (Aug. 3, 1989), 54 FR 33027 (Aug. 11, 1989).

Applicants' Condition

Applicants agree to the following condition in connection with the relief requested:

Applicants will comply with the provisions of the proposed amendments to Rule 12d3-1 (Investment Company Act Release No. 17096 (Aug. 3, 1989); 54 FR 33027 (Aug. 11, 1989)), and as such amendments may be repropounded, adopted, or amended.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 90-20860 Filed 9-4-90; 8:45 am]

BILLING CODE 8010-10-M

[Rel. No. IC-17702; 811-5307]

Richmond Capital Trust; Application for Deregistration

August 28, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Richmond Capital Trust.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application on Form N-8F was filed on August 1, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 24, 1990 and should be accompanied by proof of service on Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 10800 Midlothian Turnpike, suite 217, Richmond, Virginia 23235.

FOR FURTHER INFORMATION CONTACT: C. Christopher Sprague, Staff Attorney, (202) 272-3035, or Max Berueffy, Branch Chief, (202) 272-3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. On September 26, 1989, Applicant registered under the Act as an open-end, diversified management investment company. On that date, Applicant also filed a registration statement on Form N-1A (the "Registration Statement") to register an indefinite number of its securities of the class entitled "Richmond Capital Fixed Income Fund."

2. The Registration Statement never became effective, and accordingly, Applicant never offered its shares publicly.

3. Applicant is a Massachusetts business trust, formed and in good standing under the laws of the Commonwealth of Massachusetts.

4. Applicant has never had any assets, and thus has never transferred its assets to a separate trust, the beneficiaries of which were or are its securityholders.

5. Applicant has never made any sales of its securities, has never had any securityholders, and thus has never

made any distribution to its securityholders.

6. Applicant has no debts of any kind.

7. Applicant is not a party to any litigation or administrative proceeding.

8. Applicant is not now engaged, and does not propose to engage, in any business activity other than that necessary to abandon its status as a registered investment company and wind-up its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-20861 Filed 9-4-90; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[No. 1254]

Fine Arts Committee; Meeting

The Fine Arts Committee of the Department of State will meet on Friday, September 14, 1990 at 2:30 p.m. in the John Quincy Adams State Drawing Room. The meeting will last approximately until 4 p.m., and is open to the public.

The agenda for the committee meeting will include a summary of the work of the Fine Arts Office since its last meeting in April 1990 and the announcement of gifts and loans of furnishings as well as financial contributions for the first half of calendar year 1990.

Public access to the Department of State is controlled. Members of the public wishing to take part in the meeting should telephone the Fine Arts Office by Monday, September 10, 1990, telephone (202) 647-1990 to make arrangements to enter the building. The public may take part in the discussion as long as time permits and at the discretion of the chairman.

Dated: August 21, 1990.

Clement E. Conger,
Chairman, Fine Arts Committee.

[FR Doc. 90-20817 Filed 9-4-90; 8:45 am]

BILLING CODE 4710-38-M

[No. 1255]

U.S. Organization for the International Telegraph and Telephone Consultative Committee CCITT, Study Group B; Meeting

The Department of State announces that Study Group B of the U.S. Organization for the International Telegraph and Telephone Consultative

Committee (CCITT) will meet on Wednesday, September 12, 1990 at 9:30 a.m. at the Department of State, room 1912, 2201 C Street, NW., Washington, DC 20520.

The agenda for the meeting will include: Approval of Minutes of April 24, 1990 U.S. Study Group B meeting; Consideration of various contributions for the upcoming meeting of CCITT Study Group XI (October 1-12) and XVIII (November 28-December 7); Consideration of Recommendations proposed for approval according to CCITT Resolution No. 2 at Study Group XI Meeting; Consideration of transferring certain study areas on B-ISDN from Working Party XVIII/8 to other Working Parties of Study Group XVIII (TC 32-SVIII); nominations for U.S. delegation to study Group XI Meeting; and other business relevant to Study Group B.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and individual building passes are required for each attendee. Entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should telephone Earl S. Barbely, State Department, Washington, DC; telephone 202-647-5220. All attendees must use the C Street entrance to the building.

Dated: August 22, 1990.

Earl S. Barbely,

Director, Telecommunications and Information Standards; Chairman, U.S. CCITT National Committee.

[FR Doc. 90-20818 Filed 9-4-90; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. NPDA-2, Notice 3]

City of New York; Application for Non-Preemption Determination; Extension of Time

SUMMARY: This is a proceeding to consider the application of the City of New York for waiver of statutory preemption of the City's ordinance that effectively bans the transportation of radioactive materials through City limits. By notice published July 16, 1990, the Department invited public comment

on an additional filing submitted by the City.

The State of Connecticut has requested an extension of the comment period. The Department agrees and this notice extends the time for comment. Following the close of the comment period provided for in this notice, the City will have 30 days within which to file comments in rebuttal.

DATES: Comments received on or before October 5, 1990, will be considered.

ADDRESSES: The application, past agency notices and rulings, and all related correspondence and comments may be reviewed in the RSPA Dockets Branch, room 8421, 400 Seventh Street, SW., Washington, DC 20590. Comments on the City's new filing may be submitted to the Dockets Branch at the above address. To ensure proper handling, indicate Docket No. NPDA-2, Notice 3 on your submission. Three copies of each submission are requested.

A copy of each comment must also be sent to: Barry Schwartz, Department of Environmental Protection, City of New York, 2353 Municipal Building, New York, New York 10007. Each comment submitted to the Dockets Branch must include a certification of the fact that a copy has been sent to Mr. Schwartz (for example, "I hereby certify that a copy of this comment has been sent to Mr. Barry L. Schwartz at the address noted in the Federal Register.").

FOR FURTHER INFORMATION CONTACT: Barbara Betsock, Office of the Chief Counsel, Research and Special Programs Administration, 400 Seventh Street, SW., Washington, DC 20590 (202) 366-4400.

Issued in Washington, DC, on August 28, 1990.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

[FR Doc. 90-20764 Filed 9-4-90; 8:45 am]

BILLING CODE 4410-06-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Dept. Cir.—Public Debt Series—No. 24-90]

Treasury Notes of August 31, 1992, Series AD-1992

Washington, August 23, 1990.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately \$11,500,000,000 of United States securities, designated Treasury Notes of

August 31, 1992, Series AD-1992 (CUSIP No. 912827 ZF 2), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated August 31, 1990, and will accrue interest from that date, payable on a semiannual basis on February 28, 1991, August 31, 1991, February 29, 1992, and August 31, 1992. They will mature August 31, 1992, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in a minimum amount of \$5,000 and in multiples of that amount. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2-86 (31 CFR part 357), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239-1500, prior to 1 p.m., Eastern Daylight Saving time, Tuesday, August 28, 1990. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Monday, August 27, 1990, and received no later than Friday, August 31, 1990.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is \$5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than \$1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a $\frac{1}{8}$ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.500. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the

Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5, must be made or completed on or before Friday, August 31, 1990. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Wednesday, August 29, 1990. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the

United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Marcus W. Page,

Acting Fiscal Assistant Secretary.

[FR Doc. 90-20785 Filed 8-30-90; 11:06 am]

BILLING CODE 4810-40-M

[Dept. Cir.—Public Debt Series—No. 25-90]

Treasury Notes of November 15, 1995, Series M—1995

Washington, August 23, 1990.

1. Invitation for Tenders

1.1 The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately \$8,500,000,000 of United States securities, designated Treasury Notes of November 15, 1995, Series M—1995 (CUSIP No. 912827 ZG 0), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated September 4, 1990, and will accrue interest from the date, payable on a semiannual basis on May 15, 1991, and each subsequent 6 months on November 15 and May 15 through the date that the principal becomes payable. They will mature November 15, 1995, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in a minimum amount

of \$1,000 and in multiples of that amount. They will not be issued in registered definitive or in bearer form.

2.5. The Department of Treasury's general regulations governing United States securities, *i.e.*, Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2-86 (31 CFR part 357), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239-1500, prior to 1 p.m., Eastern Daylight Saving time, Wednesday, August 29, 1990. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, August 28, 1990, and received no later than Tuesday, September 4, 1990.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is \$1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, *e.g.*, 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than \$1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a $\frac{1}{8}$ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 98.750. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting non competitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, *e.g.*, 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when

the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Tuesday, September 4, 1990. Payment in full must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, August 30, 1990. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Marcus W. Page,

Acting Fiscal Assistant Secretary.

[FR Doc. 90-20786 Filed 8-30-90; 11:06 am]

BILLING CODE 4810-40-M

Public Information Collection Requirements Submitted to OMB for Review

August 29, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0415

Form Number: W-4P.

Type of Review: Extension.

Title: Withholding Certificate for Pension or Annuity Payments.

Description: Used by the recipient of pension or annuity payments to designate the number of withholding allowances he or she is claiming, an additional amount to be withheld, or to elect that no tax be withheld, so that the payer can withhold the proper amount.

Respondents: Individuals or households.

Estimated Number of Respondents: 12,000,000.

Estimated Burden Hours Per Response/Recordkeeping:

Recordkeeping—40 minutes.

Learning about the law or the form—20 minutes.

Preparing and sending the form to IRS—49 minutes.

Frequency of Response: On occasion.

Estimated Total Recordkeeping/

Reporting Burden: 21,720,000 hours.

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 90-20811 Filed 9-4-90; 8:45 am]

BILLING CODE 4830-01-M

UNITED STATES INFORMATION AGENCY

Book and Library Advisory Committee Meeting

The United States Information Agency announces an open meeting of the Book and Library Advisory Committee September 25, 1 p.m.-4:30 p.m. in room 800, USIA Headquarters, 301 Fourth Street, SW., Washington, DC.

The Subcommittees on Donated Books, the Eastern European Initiative and USIA/USIS Libraries will meet from 11 a.m.-12 noon. The committee members will continue discussions of ways they can enhance USIA's book and library programs abroad. Specific new book donations will be announced.

For additional information call Louise G. Wheeler or Patricia Gribben at 619-6089.

Copies of minutes can be obtained by calling 619-6089.

Dated: August 29, 1990.

Douglas Wertman,

Committee Management Officer.

[FR Doc. 90-20848 Filed 9-4-90; 8:45 am]

BILLING CODE 6230-01-M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department from number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96-511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Ann Bickoff, Veterans Health Services and Research Administration (136E), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-2282.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7318. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before October 5, 1990.

Dated: August 30, 1990.

By direction of the Secretary.

Frank E. Lalley,

Director, Office of Information Resources Policies.

New Collection

1. Veterans Health Services and Research Administration.
2. CHAMPVA Claim Form.
3. VA Form 10-7959a.
4. VA is assuming the responsibility for the payment of claims associated with the Civilian Health and Medical Program of VA (CHAMPVA) from Department of Defense (DoD). To facilitate the processing of CHAMPVA claims, VA Form 10-7959a will be completed by CHAMPVA beneficiaries and their health care providers to apply for payment/reimbursement for medical services rendered.

5. On occasion.
6. Individuals or households; Business or other for-profit.
7. 320,000 responses.

8. 1/2 hour—Beneficiaries; 1/5 hour—Health Care Providers.

9. Not applicable.

[FR Doc. 90-20863 Filed 9-4-90; 8:45 am]

BILLING CODE 8320-01-M

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the

information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96-511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (23), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316. Please do not send applications for benefits to the above addresses.

DATES: Comments on the information collection should be directed to the

OMB Desk Officer on or before October 5, 1990.

Dated: August 30, 1990.

By direction of the Secretary.

Frank E. Lalley,

Director, Office of Information Resources Policies.

Extension

1. Veterans Benefits Administration.
2. Statement of Witness to Accident.
3. VA Form Letter 21-806.
4. The form is used to obtain information from a witness to determine if a veteran's accidental injury was the result of his/her misconduct. The information is used to determine entitlement to disability benefits.
5. On occasion.
6. Individuals or households.
7. 13,200 responses.
8. 1/5 hour.
9. Not applicable.

[FR Doc. 90-20864 Filed 9-4-90; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register

Vol. 55, No. 172

Wednesday, September 5, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board;
Special Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The special meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on September 10, 1990, from 10:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883-4003, TDD (703) 883-4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. The matters to be considered at the meeting are:

Open Session

1. Reading and Approval of Minutes—August 15, 1990;
2. Other;
 - Funding Corporation—Amendment to Bank Liquidity Reserve Investment Authorities

*Closed Session

3. Corporate Restructurings; and
 - Spokane District—Eastern Idaho PCA—Preliminary Conditional Approval of Reassignment to the 11th Farm Credit District
4. Enforcement Actions.

Dated: August 31, 1990

Curtis M. Anderson,
Secretary, Farm Credit Administration Board.

[FR Doc. 90-21073 Filed 8-31-90; 3:43 pm]

BILLING CODE 6705-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, September 10, 1990.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: August 31, 1990

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 90-21007 Filed 8-31-90; 3:11 pm]

BILLING CODE 6210-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Tuesday, September 11, 1990.

PLACE: Board Room, Eighth Floor, 800 Independence Avenue, SW., Washington, DC 20594.

STATUS: Items 1 and 2 are open to the public. Item 3 will be closed under Exemption 10 of the Government in the Sunshine Act.

MATTERS TO BE CONSIDERED:

1. Pipeline Accident Report: Fire On Board the F/V NORTHUMBERLAND and Rupture of a Natural Gas Transmission Pipeline, Gulf of Mexico, Sabine Pass, Texas, October 3, 1989.
2. Aircraft Incident Report: USAir Flight 105, Boeing 737-200, N283AU, Kansas City International Airport, Kansas City, Missouri, September 8, 1989.
3. Opinion and Order: Administrator v. Friesen and Ashcraft, Dockets SE-9494 and 9401; disposition of respondents appeals.

News Media Contact:

Item 1: Mike Benson, 382-6600

Item 2: Drucella Andersen, 382-6600

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382-6525.

Dated: August 31, 1990.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 90-20991 Filed 8-31-90; 2:21 pm]

BILLING CODE 7533-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of September 3, 10, 17, and 24, 1990.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of September 3

There are no meetings scheduled for the week of September 3.

Week of September 10—Tentative

There are no meetings scheduled for the week of September 10.

Week of September 17—Tentative

Friday, September 21

11:30 a.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of September 24—Tentative

Wednesday, September 26

2:00 p.m.

Periodic Briefing on the Status of Browns Ferry 2 (Public Meeting)

3:30 p.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (301) 492-0292.

CONTACT PERSON FOR MORE INFORMATION:

William Hill (301) 492-1616.

William M. Hill, Jr.,

Office of the Secretary.

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* Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c)(4), (8), and (9).

Register Great Federal

Wednesday
September 5 1990

Part II

Environmental Protection Agency

40 CFR Parts 51 and 52

Approval and Promulgation of
Implementation Plans for Ozone and
Carbon Monoxide, California (South
Coast Air Basin); Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Parts 51 and 52**

[FRL-3817-5]

Approval and Promulgation of Implementation Plans; California (South Coast Air Basin); Plans for Ozone and Carbon Monoxide**AGENCY:** United States Environmental Protection Agency (EPA).**ACTIONS:** Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This notice announces EPA's proposed action to approve in part and disapprove in part revisions to the California State Implementation Plan (SIP) for ozone and carbon monoxide (CO) for the South Coast Air Basin (SCAB), which includes Orange County and portions of Los Angeles, Riverside, and San Bernardino Counties. The revisions were submitted to EPA by the State on August 18, 1989, and July 19, 1990. EPA proposes to approve most of the control measure commitments in the revised SIP. All of these provisions strengthen the SIP and are necessary to improve air quality. EPA is deferring action on the portions of the SIP pertaining to nitrogen dioxide (NO₂) and particulate matter (PM-10).

EPA proposes to extend its prior disapproval of the attainment demonstration portion of the plan for ozone and CO under part D of title I of the Clean Air Act ("CAA" or "the Act"), because the revised SIP does not provide, in an enforceable form, sufficient emissions reductions to demonstrate timely attainment of the standards. As a result of this disapproval, EPA proposes to retain the construction ban on major new stationary sources and major modifications to existing sources of volatile organic compounds (VOC) and CO in the SCAB. EPA proposes to conclude, however, that the progressive measures in the ozone and CO plan and the State's commitments to develop and apply additional controls in the future demonstrate that the State is making reasonable efforts at this time to submit an adequate ozone and CO SIP. Therefore, EPA does not propose in this rulemaking to initiate actions to impose in the SCAB the federal highway funding restriction under section 176(a) of the Act.

Under section 110(c), EPA also proposes to promulgate a Federal Implementation Plan (FIP) for ozone and CO for the SCAB. The proposed FIP is in response to an order by the U.S. District Court for the Central District of

California, requiring EPA to propose a FIP for ozone and CO in the SCAB no later than July 31, 1990, and promulgate no later than February 28, 1991. EPA invited comment on legal and policy issues regarding the FIP in an Advance Notice of Proposed Rulemaking (ANPRM) published on December 7, 1988 (53 FR 49494). The issues raised derive primarily from the uncertainty in the Clean Air Act regarding appropriate FIP attainment provisions for an area where near-term attainment (immediately or within 3-5 years) is impossible without severe social and economic dislocation. Based upon public comment and further analysis, EPA proposes a FIP with an attainment deadline of 2010 for ozone and 2004 for CO. EPA believes that these dates represent attainment as soon as possible with every available control measure. EPA is also proposing in the alternative a 2000 attainment date for CO which envisions use of a no drive program.

In this notice, EPA proposes two alternative approaches to obtaining the bulk of the emission reductions under the ozone FIP. The first option is a "regulatory" FIP, including regulations with sufficient emissions reductions to attain the standard. The second option is a "committal FIP," based upon the assumption that federal promulgation at this time of regulations sufficient to provide for attainment in the South Coast, together with implementation schedules and other measures, is not reasonable. The "committal FIP" includes EPA's enforceable commitment to promulgate in the future regulations to achieve the most expeditious progress toward attainment that is practicable.

Both FIP options are designed to support rather than to undermine progress scheduled under the SIP. Under both options, EPA is proposing to supplement the State plan with federal programs, such as clean motor vehicle fuels and vehicles and controls on marine vessel tanks.

The "regulatory" FIP also includes "backstop" regulations which would guarantee a constant rate of basinwide emission reductions by an incremental rollback from all controllable source categories in the area. The "backstop" measures would be rescinded before their scheduled implementation dates if adequate progress is made under the SIP.

Before EPA takes final action to disapprove the ozone and CO portions of the plan, Congressional amendments to the CAA may establish new national requirements and deadlines for SIPs. As a result, EPA may conclude that California should be allowed additional time to prepare amendments to the

SCAB plan. EPA's proposed disapproval actions might then be replaced or supplemented by action requiring California to submit additional SIP elements in accordance with the new national schedule.

Finally, EPA proposes in this notice to revise the national SIP requirements for maintenance plans for areas that do not project attainment until more than ten years after the date of SIP adoption.

DATES: Written comments on the proposed EPA action must be received by EPA at the address below on or before November 30, 1990. A public hearing on the proposed Federal Implementation Plan and EPA's proposed rulemaking on the State Implementation Plan will be held on October 22, 1990, in the Hyatt Regency, Regency Ballroom, B Level, 711 South Hope Street, Los Angeles, California. Sessions will begin at 10 a.m., 1 p.m., and 7 p.m. Other hearings and workshops may be announced in the future. EPA has delayed the initial public hearing until this date to allow ample opportunity for advance public review of this extensive proposal and to ensure that the State has an opportunity first to hold its hearings on adoption of important State measures relating to motor vehicles, clean fuels, and consumer products.

ADDRESSES: Written comments on this proposed action should be addressed to: Regional Administrator, Attention: Air and Toxics Division, State Liaison Section (A-2-2), U.S. Environmental Protection Agency, 1235 Mission Street, San Francisco, California 94103. Please submit an original and three copies, if possible.

Docket: Docket No. 90-CA-SC-1, containing a copy of the SIP submittal and the complete documentation supporting the proposed actions, is available at the above address for public inspection during normal working hours. It is recommended that you telephone (415) 556-6952 before visiting the Region IX office, since the office is in the process of relocation.

Copies of the Docket are also available at the addresses listed below: California Air Resources Board, 1102 Q Street, Sacramento, California 95814; South Coast Air Quality Management District, 9150 Flair Drive, El Monte, California 91731.

Southern California Association of Governments, 818 West 7th Street, 12th Floor, Los Angeles, California 90017.

FOR FURTHER INFORMATION CONTACT: Wallace D. Woo, Chief, State Liaison Section, Air and Toxics Division, U.S.

Environmental Protection Agency, 1235 Mission Street, San Francisco, California 94103, telephone (415) 556-5152.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Executive Summary

II. Background

A. Introduction

B. Requirements of the Act

C. The Air Quality Problem in the South Coast

1. Affected Area

2. Current Concentrations, Emission Sources, Reduction Requirements, and Associated Costs

D. History of the South Coast SIP

1. 1972 SIP

2. 1979 SIP

3. 1982 SIP

4. 1988 Ozone and CO SIP Call

E. Legal Basis and Schedule for the FIP

1. Introduction

2. Disapproval of the 1982 Ozone and CO SIP

3. *Coalition for Clean Air and Sierra Club, Inc. v. Reilly*

4. FIP Schedule

III. Summary of EPA's Proposal

A. Coupling of the FIP and SIP Actions

B. Proposed Action on the SIP

1. Disapproval of the Ozone and CO Attainment Demonstrations, Retention of the Construction Bans and Determination of "Reasonable Efforts"

2. Action on Control Measures and Control Measure Commitments

3. Action of Adopted Regulations

4. Action on Other Plan Provisions

IV. Legal Requirements of the Act

A. Requirements for Approval of Plans:

General Requirements for SIPs and FIPs

1. Demonstration of Attainment and Determination of Attainment Date

2. Reasonable Further Progress

3. Other Legal Requirements

V. SIP Evaluation and Proposed Action

A. Description of the 1989 AQMP

1. Goals and Scope of the Plan

2. SIP Submittal

3. Control Measure

B. EPA Action on the Attainment Demonstrations

C. EPA Action on Reasonable Further Progress

D. EPA Action on Control Measures

1. Criteria for Approval of Control Measures

2. Control Measures in the South Coast SIP

3. Proposed Action on ARB Control Measures (including California Motor Vehicle Program)

4. Proposed Action on SCAQMD's Control Measures

5. Proposed Action on SCAG's Transportation, Land Use and Energy Conservation Control Measures

6. "State and Federal Agencies" Control Measures

7. Proposed Action on Tier II Measures

8. Proposed Action on Tier III Measures

9. Proposed Action on Conformity Program

10. Proposed Action on Contingency Measures

E. EPA Action on Reasonably Available Control Measures

F. EPA Action on Air Quality and Emissions Data Bases

1. Introduction

2. VOC, CO and NO_x Inventories

3. EPA Analysis of Inventories

G. EPA Action on Modeling

1. Criteria for Evaluating SIP Modeling

2. Modeling Used in the South Coast SIP

3. Proposed Action on the Modeling Analyses

H. EPA Action on RFP Tracking

I. EPA Action on Resources

J. EPA Action on Contingency Plan

K. EPA Action on New Source Review

L. EPA Action on Maintenance Provisions

M. EPA Action of Analysis of Plan Effects and Alternatives

N. EPA Action on Adoption, Consultation and Public Notification

VI. Sanctions

A. Construction Ban

B. Reasonable Efforts Determination

VII. South Coast Federal Implementation Plan

A. Introduction

1. Background

2. Goals of the Plan

3. Overview of the FIP

4. Proposal in the Alternative of Two FIP Options

5. Attainment Dates

6. Withdrawal of FIP Measures

7. Compliance Approach

8. Geographic Extent of the FIP Measures

B. Core Control Measures

1. Introduction

2. Oxygenated Fuels Program

3. Gasoline Volatility Restrictions

a. Ozone Season Restrictions

b. Wintertime Restrictions for Carbon Monoxide

4. National Control Measures

a. Cold Temperature Carbon Monoxide Standards

b. Enhanced Evaporative Emission Controls

5. Controls on Marine Vessel Tanks

6. Reformulated Gasoline

7. Other Possible FIP Control Measures

C. Regulatory FIP—Option I

1. Description of the Regulatory FIP

2. Introduction to "Backstop" Control Measures

3. Compliance Options for Backstop Control Measures

4. Schedule of Reductions

5. Introduction to Group A Backstops

6. Introduction to Group B Backstops

7. Introduction to Group C Backstops

8. Introduction to Group D Backstops

D. Group A. Backstops: Stationary and Area Source Categories

1. Industrial and Commercial Solvent Use and Architectural Coatings

2. Manufacture of Products Containing VOCs

3. Disposal of Materials Containing VOCs

4. Commercial Food Preparation and/or Baking

5. Petroleum and Natural Gas Extraction, Processing and Storage

6. Consumer Products and Pesticide Products

7. Livestock Waste Operations

E. Group B. Backstops: Rail, Aircraft and Ship Operations

F. Group C Backstops: Other Off-Highway Equipment and Vehicles

G. Ultra-Clean Motor Vehicle Program

H. "Committal FIP"—Option II

I. Design of the FIP

1. Attainment Demonstration

a. Emissions Inventory

b. Modeling

(1) Ozone Modeling

(2) Carbon Monoxide Modeling

(3) Emission Inventory & Mobile Source Controls

2. Reasonable Further Progress

3. RFP Tracking Program

4. Maintenance Provisions

5. Resources

6. Consultation

VIII. Regulatory Impact Analysis

A. Administrative Designation

B. Cost Impacts

C. Benefits

D. Impact on Small Entities

E. Paperwork Reduction Act

Proposed Revisions to the Code of Federal Regulations

40 CFR 51.40—Maintenance of National Standards

40 CFR 52.258—Controls and Prohibitions on Gasoline Volatility and Liability for Violations

40 CFR 52.259—Oxygenated Fuels Program

40 CFR 52.260—Ultra Clean Motor Vehicle Backstop Program

40 CFR 52.261—Reformulated Gasoline Program

40 CFR 52.262—Rail, Aircraft & Ship Operations

40 CFR 52.264—Control Strategy & Regulations

40 CFR 52.265—Other Off-Highway Mobile Sources

40 CFR 52.266—No Drive Day Program

40 CFR 52.268—Commitment to Promulgate Additional VOC Rules

40 CFR 52.282—Control Measure for Reducing VOC Emissions From Marine Tank Vessels Loading & Unloading Operations

I. Executive Summary

EPA issues this notice under a court order to propose, by July 31, 1990, a federal implementation plan (FIP) to bring the South Coast Air Basin in California into compliance with national air quality standards for ozone and carbon monoxide (CO).

EPA's obligation arises at the least opportune moment imaginable. State and local authorities in California are in the throes of completing a concerted effort to formulate their own solution to the tremendous air pollution problem afflicting the South Coast. Congress and the President, moreover, are about to change the law governing federal implementation plans by enacting

sweeping new amendments to the Clean Air Act.

Thus, the present notice of proposed rulemaking, which describes the FIP EPA is considering for promulgation, may appear doubly inappropriate; first, because local authorities are engaged in reasonable, indeed, extraordinary efforts to deal with the air pollution problem themselves and, second, because amendments imminent to the Clean Air Act will almost certainly change the nature and scope of EPA's responsibilities before EPA issues in final form the plan to be proposed here. Even though in these circumstances EPA's obligation to propose its own plan may seem unnecessary, not to say anachronistic, the current law, as reflected in the court's order, does not leave it in doubt. The Agency has no choice under the court order but to attempt to propose a plan that brings the South Coast into compliance with current law.

In this notice, EPA seeks primarily to fulfill its legal obligations to propose a FIP under the court order and current law. The Agency also seeks to do its utmost to bring cleaner air to the South Coast Basin, the Nation's largest industrial area. These tasks are imposing. Under any reading, current law—albeit ambiguous and ill-designed to deal with the situation that besets the South Coast—will require major changes in the economic and social life of millions of people. The challenge EPA confronts in ridding the South Coast of dirty air, then, may make Hercules' labors in the Augean Stables seem like light housekeeping.

After years of effort, the State of California recently submitted its own comprehensive and aggressive plan to EPA. EPA strongly supports State and local initiatives such as are contained in this plan, since these offer the best promise of long-term improvements. Wherever legally permissible, EPA's own proposal relies on, builds upon, and reinforces these initiatives. In this way, we hope to minimize federal intrusion, avoid conflict with and duplication of local efforts, and encourage speedy implementation of the measures State and local authorities wish to adopt.

While EPA thus attempts to satisfy its mandate under the current Clean Air Act, as interpreted by the courts, the Agency notes that impending amendments explicitly exempt the South Coast from various deadlines and requirements because of its unusual, indeed unique, difficulties. The Agency of course will review the effect any new legislation may have on this proposal and on EPA's other obligations under

the amendments when they are enacted into law.

A. Scope of the Problem

One of the Nation's most extensive and stringent air pollution control programs currently regulates the South Coast. Yet, adverse weather conditions, a growing population, and other factors have saddled the region with by far the worst ozone levels in the country, and possibly the worst carbon monoxide problem of any urban area in the United States.

The ozone is harmful to health. It severely irritates the mucous membranes of the nose and throat, impairs normal lung function, causes pulmonary and nasal congestion, and reduces ability to engage in physical activity. CO is also a health concern. A colorless, odorless, and poisonous gas, CO binds the hemoglobin to deplete the amount of oxygen available to body tissues. CO weakens heart contractions, disrupts mental functions, impairs vision, and can be life threatening to those with heart disease. The South Coast suffers 150 violations of the ozone standard each year, compared to 20 in New York City and Chicago, the next-worst ozone areas. If the South Coast is to meet the national standard for ozone, it must decrease by 86 percent the current level of volatile organic compounds and make deep reductions in nitrogen oxide (NO_x) emissions.

The ozone problem cannot be attributed to any one source or kind of pollutant. Mobile, industrial, residential, consumer, and commercial sources all contribute. Thus, the only hope for sufficient improvement lies in a plan that regulates a great number of different kinds of sources. Those that are amenable to control must bear the brunt of the effort, reducing emissions by 90 percent, in order to make up for lesser gains that can be expected from sources more difficult to regulate—for example, aircraft, trains, and various non-point sources. State and local regulations in the South Coast already are among the strictest in the Nation. Further reductions in emissions—especially of the magnitude current legislation calls for—will be difficult and painful to obtain. Estimates of control requirements for the South Coast Federal Implementation Plan range from \$2 to \$6 billion for controlling volatile organic compounds to attain the ozone standard; costs for attaining the CO standard range from \$6 billion to \$1.5 billion.

To meet the air quality standard for carbon monoxide, the South Coast must reduce CO loading by about 60 percent. Motor vehicles, the hallmark of the

Californian lifestyle, account for 87 percent of CO emissions in the Los Angeles area. The sprawling contours of Los Angeles, the lack of comprehensive and efficient mass transit, and the tendency for residents to live far from their work places have led to massive reliance on the single-passenger car. Much of the requisite reduction must be achieved, then, by radically changing either the technology of automobile transportation (e.g., by switching to clean cars and fuels) or the extent to which automobiles are used at all. No technical fix alone appears feasible for accomplishing the requisite reductions.

B. South Coast Air Quality Management Plan

For the past five years, the South Coast Air Quality Management District (AQMD), which is the largest and best funded (it employs a staff of 1,000 and has an annual budget of \$100 million), and one of the most sophisticated agencies of its kind, has worked to develop a plan to control air pollution in the South Coast. The AQMD, as well as the California Air Resources Board (ARB), adopted the South Coast Quality Management Plan (AQMP) and, on August 18, 1989, submitted it to EPA as an official revision to California's State Implementation Plan (SIP). The AQMP calls for attaining the CO standard in 1997 and the ozone standard in 2007. While the AQMP adopts no regulations itself, it includes detailed descriptions of, and adoption schedules for, 147 measures, which it classifies into three stages or tiers.

Tier I comprises regulations that the District can adopt and begin to implement in the near-term, specifically, by 1993, using technology that for the most part is now in hand. The South Coast air management team expects Tier I regulations to achieve more than 45 percent of the reductions in emissions projected by the plan. Under these regulations, the South Coast AQMD itself would expand its control over emissions caused by industry and commerce. The Southern California Association of Governments (SCAG), would undertake an extremely ambitious transportation and land use control program. The California ARB, under Tier I regulations, would require further reductions in emissions from consumer products and mobile sources. The South Coast AQMD thus enlists and divides responsibilities among State, regional, and local authorities.

The Plan would accomplish the remaining emissions reductions—roughly one-half of the total—through Tier II and III regulations. Tier II

measures, scheduled for adoption by 1998, would toughen regulatory intervention and force significant advances in technology. Tier III requirements, which would be fully implemented by 2007, call for innovative technologies to nearly eliminate emissions from solvents, coatings, and the like. Tier III measures particularly affect mobile sources, requiring very clean motor vehicles and fuels. They also envision the elimination of many forms of combustion in the area.

Under the Clean Air Act, the States bear primary and principal responsibility for selecting on behalf of their citizens the appropriate strategies for meeting national air quality standards. Experience has shown that local initiative are best-suited to make the difficult and sensitive choices required to distribute the burdens associated with any pollution control plans. EPA applauds the heroic efforts of the South Coast in developing its plan, and the federal agency intends fully to back up these state efforts. In this notice, therefore, EPA not only broaches its own FIP, but also proposes to take action on the ozone and CO portions of the South Coast Plan, which the Agency seeks to support as much as it legally may.

The South Coast Plan depends heavily, however, on measures it neither adopts as regulations nor schedules for quick adoption. It contemplates many rules which it describes only in vague terms, and the Plan fails, moreover, to set forth rules in regulatory language and to commit State and local resources to implement many of the measures. The Clean Air Act as it now stands require that SIPs include in legally enforceable form all measures necessary to demonstrate timely attainment of legislated air quality objectives. Accordingly, EPA must propose to disapprove the overall attainment demonstration for ozone and CO in the South Coast SIP.

At the same time, EPA proposes to accept almost all of the State and local commitments to adopt control measures, on the grounds that such commitments strengthen the SIP and assist in eventual attainment of air quality standards. EPA proposes then to determine that the State has made and is making "reasonable efforts" to submit an approvable SIP. The progressively more stringent measures found in the South Coast Plan and the State's commitments to develop and apply additional controls in the future further demonstrate that the State has been making "reasonable efforts" to comply with the Clean Air Act.

Under current law, however, until a State submits an approvable SIP—one that demonstrates timely attainment of national air quality standards through the adoption and implementation of enforceable pollution control rules—EPA's obligation to promulgate a FIP remains intact. Thus, while EPA recognizes, indeed, acclaims State efforts to make progress against overwhelming pollution problems, EPA also remains sensible of its legal obligation, underscored by the Court, to back up those efforts by promulgating a federal plan—one which cooperates with, supports, and supplements the State plan.

C. Goals of the FIP

In promulgating a plan to meet the ozone and CO standards, EPA seeks to fulfill several goals. First, EPA must honor its legal responsibilities under the court order. But at the same time, EPA has attempted to design its FIP so as to lend maximum support to the continued development of the State plan, and to allow it eventually to supplant the federal plan in the manner intended by the framers of the Clean Air Act. Because massive federal intrusion is inherently ill-suited to strike necessary balances, and because, as we shall see, the instruments available to EPA in practical terms are far more limited in scope than those State and local authorities command, a State plan has far more certain prospects of success than a federal alternative. The prospect of a federal implementation plan, imposed by court order, should, because of its unwieldy and draconian proportions, provide an additional incentive to the successful development of the local plan.

In the FIP proposed here, EPA also seeks to employ, to the maximum extent, market-based incentives to allow the South Coast to reach mandated standards in the most cost-effective ways. This will be especially important to mitigate the harshness of the measures that EPA has no choice but to impose in order to meet legal requirements under the current Clean Air Act.

D. Pending Legislation

A year and a half ago, EPA published an Advance Notice of Proposed Rulemaking (ANPRM), 53 FR 49494 et seq. (December 7, 1988), which set forth in detail the legal problems that had arisen because the South Coast and some other areas of the nation had not met the final deadline—December 31, 1987—for attainment of air quality standards under the current Clean Air Act. The deadline had lapsed, honored

in this instance in the breach rather than in the observance, and Congress had not extended it. A thorough revision of the Clean Air Act, which now awaits final action by the Congress and the President, should straighten out this incongruity and clarify the legal remedy to be applied. At this point, however, the unsettled nature of the law with respect to FIPs compounds EPA's difficulty in responding to the South Coast Air pollution problem.

It is ANPRM, EPA suggested three possible ways to interpret its legal requirements under the lapsed deadline; it also solicited comments on those interpretations. This proposal announces EPA's intention to follow a modified version of the third interpretation, which allows for a long-term attainment date. All those who commented on the ANPRM supported a longer than five-year attainment date. EPA's FIP proposal would require the South Coast to attain air quality standards "as soon as possible" by a date certain. In fixing a new deadline under this criterion, EPA would choose the earliest date that would limit severe economic disruption and absurd, impossible, and unenforceable requirements.

E. *Delaney v. EPA*

In March, 1990, the Ninth Circuit issued an opinion in *Delaney v. EPA*, No. 88-7368 (March 1, 1990), vacating EPA's approval of two Arizona CO SIPs and ordering EPA to promulgate FIPs. Interpreting the statutory requirement to develop a FIP in light of EPA's previously issued guidance, the Court concluded that "the national ambient air quality standards must be attained as soon as possible, with every available control measure * * *." Slip Opinion at 2270. The Government is considering whether to pursue further review of this decision. However this decision goes, EPA believes its FIP proposal for the Los Angeles Area will satisfy the requirements of *Delaney* as it applies to the setting of an attainment date in the South Coast.

The FIP proposes an attainment date for ozone of 2010. For CO, the FIP proposes 2004, or in the alternative, 2000. Given the massive emissions reductions required for attainment (86 percent VOC reduction for ozone, and 60 percent reduction for CO), and the stringency of already applicable controls, these dates represent attainment "as soon as possible, with every available control measure," but without requiring absurd, impossible, or unenforceable measures.

In the case of CO, EPA is proposing an alternative date of 2000 for attainment. This date can be met only through approaches that could result in major social and economic disruption. In order to attain at this date, for example, EPA would need to impose one no-drive day per week, reduce vehicle registrations and/or the sale of fuel, and/or provide economic incentives to replace old cars. The 2004 attainment date is more reasonable, given that, by then, fleet turnover to ultra-clean vehicles will replace the older, high-CO emitting vehicles to the extent necessary to achieve attainment without requiring major disruptions in vehicle use.

The selection of a post-2000 attainment date for this CP FIP proposal, however, does not mean that such a date is suitable for the South Coast CO plan under local development. The State may be able to attain the CO standard at an earlier date, through the use of transportation control measures that are not, as a practical matter, available to the federal government. These include traffic flow improvements, mass transit, highway expansion, and trip reduction incentives. EPA is also unable to take advantage of other transportation-related controls available to the local government, for example, those that depend upon land use planning restrictions and incentives—such as general plans, bonus densities, business licenses, zoning, the allocation of redevelopment funds, etc.

F. Design of the FIP

In the first five years, EPA will impose a group of aggressive new federal regulations—the federal core measures, which go beyond anything that the state or federal authorities have done before. These, coupled with the approved portions of the current California motor vehicles program, will reduce emissions in the Basin by at least twenty percent.

The FIP then proposes two different approaches to reducing emissions after the first five years. Each approach is designed to satisfy the requirements of the law, while interfering as little as necessary with local planning efforts. Both approaches will serve to "backstop" the state plan. In the first approach, the "Regulatory FIP," EPA proposes to put into place measures that it can later withdraw if the State were to submit its own approvable substitutes. Under the second approach, the "Committal FIP," EPA offers detailed enforceable commitments to develop rules in the future in accordance with a set schedule. EPA will be able to rescind these federally imposed measures in this context as well, to the extent the State can demonstrate that its own

approvable regulations result in adequate equivalent reductions in emissions.

Thus, the EPA seeks, insofar as legally permissible, to couple the FIP it proposes today with State performance under the SIP. The Federal Plan will "backstop" or guarantee the adequacy of State action; for example, under both options, the FIP will ensure a rate of progress in emissions reduction—approximately 4 percent a year—that represents the most expeditious and practicable route to attainment.

Under either the "regulatory" or the "committal" option, implementation of particular FIP measures will depend largely upon the progress the State makes, first, in revising its SIP to correct any deficiencies EPA identifies and, second, in implementing and enforcing the SIP to achieve scheduled emissions reductions. Thus, EPA intends to work with State and local officials at every step, supporting their work, supplementing it when necessary, and implementing federal rules when required to ensure progress at the pace mandated by present legislation as interpreted by the *Delaney* Court.

1. First Five Years

In order to attain air quality standards as soon as possible, the South Coast must reduce current levels of CO and VOC emissions by at least 20 percent within the next five years. In judging State efforts to meet this goal, EPA proposes to allow credit for the current California motor vehicle control plan, already in place, which will cut in half on-road motor vehicle emissions by the year 2000. Under both the "Regulatory" and the "Committal" approaches, moreover, EPA proposes to implement certain "core" federal measures, either as area-specific controls or as national regulations. These "core" federal measures comprise:

- (a) Wintertime oxygenated fuels program;
- (b) Gasoline volatility restriction through the ozone season (April through September);
- (c) Wintertime gasoline volatility restriction for CO;
- (d) Reformulated gasoline;
- (e) Cold CO emission standard for light-duty cars and trucks, to be proposed nationally in the near future;
- (f) Enhanced evaporated emission controls for gasoline-fueled motor vehicles, proposed nationally in January, 1990; and
- (g) Controls on marine vessel tanks.

2. The FIP After the First Five Years

The California motor vehicle program and the "core" measures should meet

progress requirements for the first five years under either approach to the FIP. Thereafter, from 1995 through 2010, the FIP would guarantee a constant rate of basinwide emissions reductions. The two approaches or options—the "Regulatory" and the "Committal" FIPs—differ in the method by which they would obtain these remaining required reductions.

a. *The Regulatory FIP.* EPA has attained to draft a complete set of regulations that provide that the South Coast attain air quality standards for CO and ozone. Those regulations would come into force to increase emissions reductions after the first five years, and later in the life of the FIP. In this "regulatory" approach to the FIP, EPA cannot plan for or count on the development of pollution control and other relevant technology over time. Rather, EPA has written a plan completely in the language of regulation to show attainment without restricting controls to the limits of available technology or counting on its growing ability to fine-tune regulations among source categories and otherwise learn from experience and emerging technologies.

Under the regulatory FIP, EPA will promulgate rules that will accomplish the necessary additional reductions, beginning in 1995, not achieved by approved by federal "core" and federally approved SIP measures. First, to "backstop" State efforts to make adequate further progress toward attainment, EPA proposes to implement, should these efforts fail, a straight rollback of emissions from individual stationary and area sources or source categories. Other backstop measures establish stringent emission limits for various mobile sources that would go into effect unless superseded by state measures achieving equivalent emission reductions. The backstops will guarantee the remaining needed reductions. Each source category will be subject to a comparable emission reduction requirement.

The regulatory FIP will require the introduction of "ultra-clean" vehicles and will establish aggressive new motor vehicle standards that manufacturers may meet through a variety of combinations of technology involving fuel mix and vehicle design. The proposed FIP includes a general or "composite" in-use emission standard to apply instead of the now separate requirements for exhaust, evaporative, and evaporative running loss emissions, as well as to refueling emissions. The composite standard would cover all vehicles on the road, regardless of

maintenance and use. This composite approach will encourage manufacturers to find the mix of fuel and vehicle design that will reduce total emissions at least cost. This approach leaves the technological choices to those most competent to make them and who have the greatest incentive to achieve emission reductions at the least cost.

The stationary and area source regulatory measures will apply to consumer products, industrial and commercial solvents, disposal of VOC-containing materials, pesticides, manufacture of VOC-containing products, petroleum and natural gas extraction, processing, and storage, commercial food preparation, livestock waste operations, and architectural coatings.

After application of all of EPA's core and regulatory back-stop measures, some current projections of socio-economic growth suggest that there may arise a need for an additional 70 tons per day emissions reductions—roughly 5 percent of emissions reductions necessary to reach attainment. EPA is unable at present to identify other available, effective control measures which could eliminate such a shortfall without imposing unacceptable impacts on the South Coast. In light of the uncertainty inherent in the growth projections, and the long time span of the FIP, EPA is proposing to commit to periodic—at least every three years—monitoring of growth projections over the life of the FIP. EPA is further committing to promulgate, based on subsequent, more accurate predictions, a regulation to cure any shortfall, should one remain.

3. Measures to Mitigate the Severity of the Regulatory Measures

The regulatory measures will mandate strict reductions of emissions from these sources. The result may well be costly and disruptive, because EPA, rather than assessing available technology, is simply ordering across-the-board emissions cuts to meet progress requirements. Because, for stationary and area sources, these rules must be issued in advance of agency determinations regarding the feasibility of compliance approaches, EPA has attempted to mitigate the severity of the onerous regulatory measures in several ways.

First, EPA has built some flexibility into its regulations by allowing the affected industries to determine how they will achieve their required VOC reductions. While EPA's proposal specifies the amount of emissions reductions required from each source group each year, EPA does not dictate

how these reductions are to be achieved. Thus, each industry will be allowed to determine the best approach for meeting its required VOC reductions. A source could elect to reduce emissions, for example, by reformulating products, by substituting products, by installing control equipment, or by purchasing emissions reductions credits.

EPA intends to foster development of clearinghouses to minimize the establishment, purchase, and trading of emission credits. In this manner, the use of marketable operating permits with declining VOC emission limits can function as an economic incentive to reduce emissions in the most cost-effective ways. EPA's proposed ultra-clean cars measure also contains special features, including averaging, banking and trading, aimed at enabling motor vehicles and fuel manufacturers to select control options with due consideration of costs.

EPA also has the opportunity to withdraw imposed or impending regulatory measures if the State is otherwise able to achieve the requisite reductions. This opportunity for withdrawal also mitigates some of the unavoidable harshness of the regulatory measures EPA proposes here. This is the essence of the "back-stop" character of the FIP. EPA's plan guarantees progressive emissions reductions that will lead to attainment. But should the State's plan achieve equivalent reductions, EPA may remove its "backstop" regulations. EPA intends to establish a public process for projecting future levels of actual emissions, so that the State will have advance warning of the amount of emissions reductions its plan must achieve to meet the progress requirements for each year. If the State is able to secure this progress, either in whole or in part, EPA will to that extent amend its regulations. EPA will be able to substitute less severe or restrictive requirements for the original reduction schedule, or it can withdraw a requirement completely if the state has been able to shoulder the necessary burden. In this way EPA can satisfy its FIP obligations without overwhelming State planning initiatives or piling regulatory burdens unnecessarily on the citizens of the South Coast.

4. "Committal FIP"

As we have seen, air quality in the South Coast is so poor that, even if EPA or the State take twenty years to attain air quality standards, they will need to impose draconian measures to do so. In order to mitigate the stringency of these measures, EPA proposes, as an alternative to the crude backstop rules of "regulatory FIP" the requirements

that will remain after application of the "core" measures and after crediting the California motor vehicle program with the reductions it will achieve.

This "committal" portion of the FIP would comprise EPA's specific, enforceable commitments to develop rules to achieve additional emissions reductions by specified future dates, beginning in 1994. Each commitment would identify the source category, the amount of reductions required, a schedule for implementing the measure, projected timing of the reductions, and the schedule for promulgating such a measure as an enforceable, regulatory requirement. A "committal" FIP would contain many provisions similar to those in the "regulatory" FIP, but may venture into areas in which as of this moment technology has not been developed or regulatory language devised to achieve additional reductions and at lower costs. Given the long attainment period and the difficulty of providing for attainment, the "committal FIP" would permit more time for studying regulatory strategies and for developing appropriate control measures.

G. Other FIP Measures

During its preparation of this proposal, EPA attempted to examine a wide range of control measures. While EPA has not eliminated any specific measure from consideration for eventual inclusion in the FIP, the proposed policy does not include every conceivable regulation. It omits some theoretical options from full consideration for a number of reasons, such as concerns of unacceptably harsh impacts, enforceability, adequacy of authority, or resources to implement and enforce, adverse air quality impacts. EPA lists these possible measures in an appendix and solicits comment on them. In addition, if EPA were to pile on top of the regulations it is proposing every measure, without regard to whether it would materially strengthen the FIP, or could be implemented without widespread severe disruption, the result would be a deluge of measures that would overwhelm and choke the entire regulatory system.

H. Conclusion

Since its creation, EPA has attempted to enforce the Clean Air Act in the South Coast Basin, as in other areas, where air quality goals have proved far easier to promise than to attain. Throughout the nineteen-seventies and eighties the Agency has confronted a constant dilemma in enforcing the Clean Air Act for the South Coast and similar areas: either to throw in the towel or to

promulgate measures so draconian and invasive that they may not be approved by Congress or, even if approved, may not be enforced upon a citizenry unwilling so drastically to change its way of life. In these decades, and again today, EPA has sought a way through the horns of the dilemma. The FIP proposed here adopts rigorous and stringent policies that will bring the South Coast into compliance as soon as possible, but it avoids measures so harsh that Congress could never have intended them.

The Clean Air Act Amendments now nearing enactment promise to answer the real needs of the people of the South Coast Basin and of the citizens in similar areas whose air quality problems cannot be solved by legislative and judicial mandates to EPA to clean up the air right away. The FIP proposed here enters, insofar as is permissible under the current Act, into the spirit of the new Act by taking a practicable, sober, and realistic approach to controlling air pollution along the South Coast. The present proposal would attain air quality goals over twenty years—alternatively by promulgating strict but enforceable regulatory measures without the certain knowledge of available technology to avoid dislocation (the regulatory FIP) or by committing the government to technology-forcing, adaptive, and innovative regulations over the same time period (the committal FIP).

In offering these alternative approaches to its FIP and in soliciting comments upon them, EPA respects the court's mandate to achieve air quality standards in the region. It also seeks to cooperate with, support, and supplement the excellent state plan, without which no pollution control effort could succeed.

While doing our utmost to bring the South Coast Basin into compliance with the current Clean Air Act in a reasonable amount of time, EPA, with its two-decade long institutional memory, cannot help but feel a sense of *deja vu*. Given the Agency's many attempts to make workable policy for the area—attempts from which the framers of the new Clean Air Act Amendments have learned a great deal—we can even claim, along with Yogi Berra, to feel *deja vu* all over again. We recognize, however, that the new statute will end this repetitive history by setting out a new context for attaining air quality goals in the South Coast Basin. Given the imminent prospect of the Amendments, the present task of the Agency to write a FIP under the old

statute goes beyond *deja vu* to sheer anachronism.

The Agency nevertheless draws upon its expertise, experience, and sense of what is fair and possible, to propose the most propitious policy it can, given the legal circumstances in which it find itself. Thus, the following pages contain in more detail the Federal Implementation Plan EPA proposes to promulgate under court order within the current Clean Air Act.

II. Background

A. Introduction

On December 7, 1988, EPA published an ANPRM for the South Coast CO and ozone FIPs, 53 FR 49494 et seq. The reader is referred to the ANPRM for a more extensive presentation of background information on the requirements of the CAA, the history of previous SIP submittals for the South Coast and EPA's action on those SIPs, and the legal basis for the proposed FIP.

B. Requirements of the Act

Section IV of this notice summarizes EPA's current SIP elements for areas subject to section 110 or Part D of the Act. If a state fails to submit an approvable SIP, section 110(c) directs EPA to promulgate a FIP to remedy SIP deficiencies.

C. The Air Quality Problem in the South Coast

1. Affected Area

The SCAB includes Orange County and the non-desert portions of Los Angeles, Riverside, and San Bernardino Counties, an area of 10,000 square miles with a population of 12,000,000. The SCAB is the largest industrial area in the country. Regional forecasts for the SCAB project the following growth rates from 1985–2010: Population 37%, Housing 46%, Jobs 47%, Vehicle Miles Traveled 68%, Vehicle Trips 40%. These projections are used in the SIP, and EPA has accepted them for the FIP.

2. Current Concentrations, Emission Sources, Reduction Requirements, and Associated Costs

Because of adverse meteorology and topography and high population levels, the SCAB has by far the worst ozone and NO_x levels in the United States, and arguably the worst PM-10 and CO levels of any urbanized area in the United States. The severity and frequency of the violations and the size of the exposed population make SCAB air pollution one of the Country's most serious environmental and public health problems.

a. *Ozone*. Ozone is a photochemical oxidant and the major component of smog. Atmospheric ozone is formed when VOCs react with nitrogen oxides (NO_x) in the presence of sunlight.

In this notice, the federal terminology, VOC, is used interchangeably with the South Coast SIP's comparable term, reactive organic (ROC), which differs from VOC only by including ethane. Heat speeds up the photochemical reaction, and therefore atmospheric ozone concentrations are usually highest in the summertime. While ozone in the upper atmosphere shields the earth from harmful ultraviolet radiation given off by the sun, high concentrations of ozone at ground level are a major health and environmental concern. Acute health effects include inflammation of the lungs, impaired breathing, increased acute respiratory infection, coughing, chest pain, nausea, and throat irritation. These effects are of particular concern for asthmatics, children, and the elderly. Chronic effects of repeated exposure include increased susceptibility to respiratory infection, permanent damage to lung tissues, and impaired breathing capacity. Ozone also reduces crop yield, may severely damage forests, and adversely impacts buildings and materials.

Significant progress has been achieved by the State and local air pollution control program over the past 25 years, but peak ozone concentrations in the South Coast still reach almost three times the standard level, and approximately 150 exceedances occur annually at the worst site over a nine-month season. While mobile sources (both on-road and off-road vehicles) currently represent 52% of VOC emissions, the projected inventory for 2010 (without further controls) shows 38% mobile, 33% industrial, and 28% residential and commercial. Attainment of the standard will require approximately an 86% further reduction in summertime VOCs along with reductions in NO_x emissions.

b. *Carbon monoxide*. CO is a poisonous gas produced by the incomplete burning of carbon in fuels. High levels of CO tend to reduce the oxygen carrying capacity of the blood. This is a particularly serious health threat to individuals who suffer from angina or heart disease. Moreover, CO impairs exercise capacity, visual perception, manual dexterity, learning ability, and performance of complex tasks in healthy individuals.

CO violations in the South Coast are monitored primarily in the winter and only in the Los Angeles and Orange County portions of the basin, where

peak values are approximately two-and-a-half times the 8-hour standard. No violations of the one-hour CO standard have been recorded in recent years in the SCAB. On-road vehicles account for 87% of CO emissions.

Reductions in health and welfare damages in the South Coast Air Basin are not without cost. Estimates of incremental costs (beyond those required for existing regulatory programs in the District) for reducing VOC (86%) and CO (60%) emissions have been made for the requirements for the South Coast FIP. These estimates of control costs requirements represent full attainment and are in the range of \$2 to \$6 billion for controlling volatile organic compounds (ozone precursors) and between \$6 and \$1.5 billion for CO. The Agency believes that a best (point) estimate of the total costs for the FIP program would be approximately \$2.6 billion. The majority of these costs are for the backstop measures and do represent a high degree of uncertainty. This factor was taken into account by costing out backstop measures using a range of \$2,000 to \$10,000 per ton VOC to characterize this uncertainty. These estimates are somewhat comparable to estimates generated by the SCAQMD. The District has produced cost estimates for all quantifiable phases of their AQMP for all pollutants for controls to implement Tier I measures that total \$2.6 billion per year.

D. History of the South Coast SIP

EPA's Advance Notice of Proposed Rulemaking (ANPRM) on the South Coast FIP reviews at length the implementation of the Clean Air Act requirements in the South Coast with respect to ozone and CO (53 FR 49494 et seq., December 7, 1988, see particularly 49497-49501). The discussion below briefly summarizes that account and adds information on the NO₂ and particulate matter SIP history.

1. 1972 SIP

In response to the requirements of the 1970 CAA, California submitted a SIP in February 1972. In May 1972, EPA disapproved the plan because it failed to show attainment by the 1975 statutory deadline. When EPA failed to promulgate a FIP under section 110(c), a Southern California public interest group brought suit and the U.S. District Court for the Central District of California ordered EPA to issue a FIP providing for attainment no later than 1977. During 1973, EPA issued several proposed FIPs, all but one of which contained extreme provisions, including gas rationing. Following promulgation of the final plan on October 12, 1973 (38 FR

31232), many suits were filed to enjoin enforcement of the FIP, and EPA later in the year postponed implementation of much of the FIP. The FIP was finally withdrawn in 1976 because EPA believed that its disruptive social and economic consequences would be unacceptable.

2. 1979 SIP

In accordance with the requirements of the 1977 CAA, California submitted a SIP for the South Coast in 1979, addressing ozone, CO, NO₂ and particulate matter (at that time, a Total Suspended Particulate standard). Both the NO₂ and particulate matter SIPs were conditionally approved by EPA. As authorized by Part D of the CAA, the State requested an extension beyond the 1982 attainment date for ozone and CO, but the SIP failed to provide enabling legislation for an I/M program—one of the requirements applicable to urban areas seeking an attainment date extension for either ozone or CO. As a result, the South Coast SIP for ozone and CO was not approved and both the construction ban and section 176(a) highway sanctions were imposed and not removed until the State legislature adopted I/M enabling legislation in 1982.

3. 1982 SIP

The State submitted a comprehensive South Coast SIP update in 1982. This plan included over 100 control measures for implementation between 1982 and 1987, but showed a substantial shortfall in achieving the emission reductions necessary to attain either the ozone or CO standards by the CAA Part D deadline of 1987. In addition, the plan did not include commitments to adopt all of the measures contained in the plan.

a. *1983 proposed disapproval and 1984 conditional approval.* On February 3, 1983 (48 FR 5074), EPA proposed to disapprove the 1982 South Coast SIP for ozone and CO because the plan did not provide for attainment by 1987. In final rulemaking published July 30, 1984 (49 FR 30300), however, EPA took no action on the attainment demonstration and approved or conditionally approved the remainder of the SIP, including the control measures and commitments, many of which had finally been submitted in 1984. EPA indicated that the commitments of the State to continue long-term attainment planning justified the decision not to disapprove the attainment demonstration. EPA later proposed to continue to withhold disapproval of the SIP so long as the State adopted all control measures as they become reasonably available. On September 26, 1986, (51 FR 24428), EPA

solicited comment on this policy, which was known as the "Reasonable Extra Efforts Program."

b. *1987 proposed disapproval.* On July 14, 1987 (52 FR 26431), EPA again proposed to disapprove the 1982 South Coast SIP for ozone and CO because of the plan's failure to demonstrate attainment by 1987. EPA concluded that the absence of a persuasive demonstration of attainment by the end of 1987 (or a fixed, near-term date thereafter) compelled disapproval, despite progressive air pollution control efforts by the State. The detailed rationale for this determination was presented in a General Preamble to the disapproval notice (52 FR 26404). EPA also determined that the State continued to make "reasonable efforts" to submit an approvable SIP and that, therefore, it was inappropriate to propose the section 176(a) or 316(b) sanctions.

c. *1988 final disapproval.* The proposed disapproval was finally promulgated on January 22, 1988 (53 FR 1780). The disapproval complied with instructions from the Court in *Abramowitz* (see section II.E.2, below). The Court also vacated EPA's approval of the control measures in the 1982 SIP.

4. 1988 Ozone and CO SIP Call

On November 24, 1987 (52 FR 45044), EPA proposed a Post-1987 Ozone and CO Policy, setting forth proposed requirements for areas that failed to attain the standards by the statutory deadline of December 31, 1987. These proposed requirements included: Corrections of deficiencies in, and full implementation of, the 1982 SIPs; adoption of enhancements to I/M programs; and submission of revised SIPs demonstrating attainment over an expanded planning area as expeditiously as practicable through the achievement of at least a three percent per year reduction in the base year emissions.

On May 26, 1988, EPA began issuing notices of SIP inadequacy under section 110(a)(2)(H) through letters to the Governors of states with areas which failed to attain the ozone and CO standards or which contributed to violations of the standards. See 53 FR 34500 (September 7, 1988). EPA's 26th letter to the Governor of California conformed to the national policy by asking that the State:

(1) Correct the SIP where it failed to meet EPA's existing Part D guidance relating to control of VOC and CO emissions;

(2) Satisfy unimplemented SIP commitments by adopting any missing control measures; and

(3) Begin updating the base year emissions inventory for new attainment plans to be prepared in the future.

The State of California responded to the SIP call with commitments from the ARB and the air quality planning jurisdictions in affected areas of the State. The commitment from the South Coast Air Quality Management District (SCAQMD) addressed the requirements of the SIP call, including scheduled adoption of corrections to specific VOC RACT rules. These responses are included in the TSD.

E. Legal Basis and Schedule for the FIP

1. Introduction

Much of the background for the proposed FIP, including statutory and regulatory history, is set forth in detail in the ANPR cited above. We set forth in this notice only a bare outline of the legal basis for our current action. The reader should consult section VII.A. for a review of specific legal issues relating to the FIP's attainment dates and the form of the plan.

2. Disapproval of the 1982 ozone and CO SIP

On January 22, 1988, EPA disapproved the 1982 ozone and CO SIP for the South Coast, in response to an order from the U.S. Court of Appeals for the Ninth Circuit. See 53 FR 1760; *Abramowitz versus EPA*, 832 F.2d 1071 (9th Cir. 1987). The SIP was disapproved because it failed to include a demonstration of attainment by the end of 1987. In the same notice, the construction ban under section 110(a)(2)(I) was imposed for major new or modified sources of VOC and CO. The effective date of EPA enforcement of the ban was delayed until August 31, 1988, due to the provisions of the Mitchell-Conte Amendment to the Budget Reconciliation Act of 1987, Public Law 100-202 (Dec. 22, 1987).

3. Coalition for Clean Air and Sierra Club, Inc. v. Reilly

In February 1988, the Coalition for Clean Air and the Sierra Club, Inc., filed a complaint in U.S. District Court in California to compel EPA to promulgate a FIP providing for attainment of the ozone and CO standards in the South Coast. EPA acknowledged such a duty and in September 1988 the U.S. District Court for the Central District of California issued an order affirming this obligation.

4. FIP Schedule

On February 16, 1989, EPA and the plaintiffs filed with the Court a proposed settlement agreement providing for the

EPA Administrator to sign the proposed FIP by April 30, 1990, and issue the final FIP by February 28, 1991. On March 28, 1989, the Court entered an order that incorporated the settlement schedule and stayed the proceeding until March 31, 1991. Following an October 1989 earthquake which displaced the EPA Region IX staff from their offices for a four-month period, the Court granted EPA a three-month extension in the proposal date for the FIP and suggested that it would consider extensions of the February 28, 1991 date for final FIP promulgation should the need for such an extension arise.

III. Summary of EPA's Proposal

A. Coupling of the FIP and SIP Actions

This notice combines EPA rulemaking on the revised South Coast SIP and EPA proposal of the FIP. The actions are joined for three reasons:

1. EPA's decision to approve or disapprove the SIP for ozone and CO determines whether a FIP is required.
2. EPA's FIP is partially based upon, and partially corrects and updates, the technical foundation of the revised SIP, including base year and projected emission inventories, modeling analyses, air quality and meteorological data, and estimated emission reductions from SIP control measures.
3. Implementation of EPA's "backstop" FIP control measures and EPA's future adoption of "committal" rules depend largely upon the progress made by the State in (a) revising the SIP to correct deficiencies identified by EPA and (2) implementing the SIP to achieve scheduled emission reductions. (As defined below, the "backstop" measures in EPA's Option I FIP are federal regulations which would serve to guarantee a constant rate of areawide emission reductions should the State fail to adopt equivalent measures or to meet progress requirements; "committal" rules are those which EPA is not including in the initial FIP as actual regulations but which EPA would enforceably commit to develop and promulgate at prescribed dates in the future.)

B. Proposed Action on the SIP

1. Disapproval of the Ozone and CO Attainment Demonstrations and Provision for Reasonable Further Progress, Retention of the Construction Bans, and Determination of "Reasonable Efforts"

EPA proposes continuation of the disapproval of the ozone and CO SIP, because the measures in the revised SIP do not provide sufficient emission reductions in an enforceable form to

demonstrate timely attainment of the standards. For the same reason, EPA proposes to disapprove the SIP's provision for reasonable further progress. EPA proposes to retain the construction ban for the precursors to these pollutants but to conclude that the progressive measures in the SIP and the State's commitments to develop and apply additional controls in the future demonstrate that the State is making "reasonable efforts" to submit an approvable SIP. As a result, EPA is not proposing to initiate action at this time respecting the federal highway funding limitations under section 176(a).

2. Action on Control Measures and Control Measure Commitments

EPA proposes to approve all of the control measure commitments in the SIP except for the following:

a. EPA proposes to defer action on the commitments for the Contingency Program, which includes the measures listed below. These measures are merely concepts for future development. Following SIP submittal of completely described contingency measures and specific commitments, EPA could approve the commitments.

- T-1 Emission Changes on Gasoline and Diesel Fuels Used by Motor Vehicles (All Pollutants)
- T-2 Limits of Vehicle Registration (All Pollutants)
- T-3 Emission Charges on Parking Lots (All Pollutants)
- T-4 Emission Charges on Vehicle Use (All Pollutants)
- T-5 Reduction of VMT to 1985 Levels (All Pollutants)
- T-6 Highway User Fees (All Pollutants)
- T-7 Oxygenated Fuels Program (CO)
- T-8 Time and Place Control Measures (All Pollutants)

b. EPA proposes to defer action on the commitments for "State and Federal Agencies" control measures since the measures currently lack several of the basic elements necessary for SIP approval, including adequate legal authority. If the State submits the missing elements, EPA could approve the commitments. These measures are:

- B-11 Control of Emissions from OCS Exploration, Development and Production (All Pollutants)
- E-1 Control of Emissions from Pesticide Application (VOC)
- I-2 Lower Emission Standards on New Jet Aircraft Engines (VOC, NOx)
- I-3 Control of Fugitive Emissions from Marine Vessel Tanks (VOC)
- I-6 Control on Switching Locomotives (All Pollutants)
- SCAG 9 Replacement of High Emitting Aircraft
- SCAG 14 Railroad Electrification (All Pollutants)

c. EPA proposes to defer action on "Out-of-Basin Transportation of Biodegradable Solid Waste, D-5" since the measure appears to have been relegated to a further study category.

d. EPA proposes to defer action on "Freeway and Highway Capacity Enhancements" (SCAG Measure #13) to allow the State to submit supplemental information to substantiate the emission reductions claimed and the appropriateness of the measure as part of the SIP (see section V.D.5.k.).

3. Action on Adopted Regulations

a. EPA proposes to approve the revised South Coast 1989 Conformity Provisions (1989 Conformity Chapter of Appendix IV-G of the 1989 AQMP), adopted by SCAG on April 21, 1989, by SCAQMD on August 4, 1989, and by ARB on June 21, 1990, and submitted on July 19, 1990.

4. Action on Other Plan Provisions

EPA proposes to approve the SIP as it pertains to all remaining section 110(a)(2) and part D requirements for the SIP with the following exceptions:

a. EPA proposes to defer action on the modeling and emissions inventory provisions of the SIP for ozone and CO, because of technical issues discussed below in V.F. and G. In the FIP portion of this notice, EPA's provisional adjustments to the modeling and inventory are discussed.

b. Because EPA is proposing disapproval of the attainment demonstrations, EPA proposes also to disapprove the SIP for ozone and CO with respect to the provisions for maintenance.

c. EPA proposes to defer action on the contingency plan elements pending receipt of additional information from the State clarifying the operation of the contingency process and providing either a list of planned transportation measures and projects that may adversely affect air quality or justifying the contention that there are no such planned transportation measures and projects.

d. EPA proposes to defer action on the VOC reasonably available control technology (RACT) requirements, pending submittal of a response by the State to the national SIP call for correction of VOC RACT deficiencies. If the State has not corrected the deficiencies by September 1990 (in accordance with the most recent commitment by the SCAQMD), EPA will propose to disapprove the deficient rules and to promulgate substitute federal regulations.

IV. Legal Requirements of the Act

A. Requirements for Approvable Plans: General Requirements for SIPs and FIPs

This section briefly summarizes EPA's current plan elements for areas subject to section 110 or part D. The elements apply both to the proposed SIP approval action and, in general, to the proposed promulgation of the FIP. These elements are discussed at length in EPA's guidance on SIP revisions. See, for example, 44 FR 20372 et seq. (April 4, 1979) and 46 FR 7182 et seq. (January 22, 1981). Upon passage of CAA Amendments, which are currently under consideration by Congress, these requirements would be amended to accord with the revised statute. If pertinent amendments are enacted before final action on the SIP, EPA's proposed actions on the South Coast SIP would be revised as necessary and an amended proposal would be published.

1. Demonstration of Attainment and Determination of Attainment Date

Section 172(a)(1) of the Act states that "an applicable implementation plan * * * shall provide for attainment of each such national ambient air quality standard in each such area as expeditiously as practicable." Section 110(a)(2)(B) requires this plan to "include emission limitations, schedules, and timetables for compliance with such limitations, and such other measures as may be necessary to insure attainment * * *." For EPA's current interpretation of these requirements in the period after the December 31, 1987 attainment deadline in the Clean Air Act, the reader is referred to the discussion in the introduction to the FIP (VII.A.2 and 3).

2. Reasonable Further Progress (RFP)

A SIP for an area that is still subject to the part D planning requirements must be adequate to produce RFP, as required by section 172(b)(3). This means that the SIP must produce "annual incremental reductions" in emissions, including "substantial reductions in the early years following approval" of the plan, sufficient to provide for timely attainment. See section 171(1).

3. Other Legal Requirements

Title I of the Clean Air Act also provides additional requirements for SIPs. This section describes these requirements. Much of this discussion is derived from the two *Federal Registers* cited above in the introduction to this section, 40 CFR part 51, and "Guidance Document for Correction of Part D SIP's for Nonattainment Areas," January 27, 1984. The latter document references a

variety of additional *Federal Register* notices and EPA policy statements.

a. *Adoption, consultation, and public notification* (sections 110(a)(1), 172(b)(1), 121, and 127)—*Public Notification*. Section 110(a)(2)(j) requires the plan to meet the requirements of section 127, which states that each plan shall notify the public of instances or areas in which any NAAQS is exceeded or was exceeded.

Consultation. Section 121 requires that the public, local government, and State Legislature be consulted and involved in the planning procedures and plan implementation. Thus the State must adequately document that a satisfactory process has been carried out pursuant to section 121 for consultation with general purpose local governments, designated organizations of elected officials of local governments, and any Federal land manager having authority over Federal land to which the SIP applies.

b. *Reasonably Available Control Measures* (sections 172(b)(2) and 172(b)(3)). (1) *RACT*. Section 172(b)(2) requires the plan to "provide for the implementation of all reasonably available control measures as expeditiously as practicable". Section 172(b)(3) also requires that, in the interim, reasonable further progress is made, including reduction in emissions from existing sources through adoption of Reasonably Available Control Technology (RACT). This may include the adoption and enforcement of regulations representing RACT for stationary sources, transportation RACT measures, and control of mobile source emission through implementation of a motor vehicle inspection and maintenance program. These requirements were articulated in the April 4, 1979, general preamble (44 FR 20372) and remain essentially unchanged.

(2) *Reasonably available transportation control measures*. Detailed requirements for implementation of all reasonably available transportation control measures are contained in the January 22, 1981, Policy Statement (46 FR 7182). Areas must implement "all transportation RACT measures and packages of measures necessary for expeditious attainment of the transportation emission reduction target" (p. 7187). The categories of such measures are identified in section 108(f) of the Act.

As noted above, independently of today's FIP proposal, EPA is revoking certain aspects of this guidance as it applied to 1982 planning for post-1987

attainment, to avoid any unintended implication that post-1987 planning should provide for attainment as soon as possible using unreasonable measures with severe socioeconomic impacts. However, the outstanding portions of the 1981 guidance concerning use of all reasonably available transportation control measures remain applicable to all post 1987 planning. Generally, plans should contain all reasonable measures listed in section 108(f), or an explanation of why any such measures are not appropriate for implementation given the particular facts of the area involved.

(3) Inspection and Maintenance (I/M) program. Section 110(a)(2)(G) provides for "periodic inspection and testing of motor vehicles to enforce compliance with applicable emission standards". In addition, section 172(b)(11)(B) establishes a "specific schedule for implementation of a vehicle emission control inspection and maintenance program". All nonattainment areas that received a Post-1982 extension for attainment of the NAAQS for ozone or carbon monoxide are required to include vehicle I/M as an element for their plan.

c. *New Source Review.* The SIP must contain a permitting program for major new and modified stationary sources which meets the requirements of section 173(1) and 40 CFR 51.160-51.165 (including revisions of June 28, 1989) and 40 CFR part 51, appendix S, section IV. (except where superseded by § 51.165).

d. *Conformity of Federal actions.* Section 176(c) of the CAA requires all Federal projects, licenses, permits, financial assistance and other activities to conform to the SIPs. For ozone and CO SIPs, EPA has relied on the authority of section 110(a)(2)(B) to call on states to include in the SIP specific procedures and criteria for evaluating the conformity of local transportation plans, programs, and projects with the SIP. The SIP must provide assurance that individual projects will not cause new violations of the standards or exacerbate existing violations. Additional detail on this element is provided below in V.D.8.

e. *Air Quality and Emissions Data Bases.* Section 110(a)(2)(C) provides for the establishment and operation of "appropriate devices, methods, systems, and procedures necessary" to "monitor, compile, and analyze data on ambient air quality." Section 110(a)(2)(F) provides requirements for "installation of equipment by owners or operators of stationary sources to monitor emissions from such sources." Finally, section 172(b)(4) calls for a "comprehensive, accurate, current inventory of actual emissions from all sources."

Baseline and projected inventories must be current and sufficiently accurate and detailed to provide the necessary input for EPA-approved models. Emission inventories should be comprehensive and include emissions from all major stationary sources, minor stationary sources, mobile sources, and area sources. See appendix D of the January 22, 1981 Policy Statement (46 FR 7182).

f. *Modeling.* The generally available models for evaluating air quality problems are described in the "Guideline on Air Quality Models", July 1986, EPA 450/2-78-027R, Supplement A to this Guideline (July 1987), and the January 22, 1981 Policy Statement (46 FR 7182). The acceptability of models other than those listed in the existing guidance will be determined on a case-by-case basis in accordance with procedures in the guideline on air quality models. Although the use of more sophisticated models is encouraged, any models other than those contained in the mentioned guidelines must be approved by EPA in advance.

g. *Contingency plan.* To ensure continued progress toward attainment in situations in which analyses of air quality and control measure effectiveness indicate that RFP is not being maintained, EPA in policy statements has called on states to include in their SIPs must include a contingency plan. This provision must specify additional controls or procedures for identifying additional controls which will be implemented if shortfalls in emission reduction occur, and must specify the time frames for implementation of such measures. EPA's policy also specifies that the contingency plan include a list of those planned transportation measures and projects that may adversely affect air quality and that will be delayed while the SIP is being revised to adequately provide for attainment and maintenance of the standards if expected emission reductions or air quality improvements do not occur. For further details on this element, see the January 22, 1981 Policy Statement.

h. *Maintenance plan.* Section 110(a)(1) states that implementation plans shall provide for "implementation, maintenance, and enforcement of [the national] primary [ambient air quality] standard in each air quality control region". A similar plan shall be submitted for secondary standards. (For ozone and CO the primary and secondary NAAQS are the same.) Section 110(a)(2)(N) calls for emission limitations, schedules, and timetables

"for compliance with such limitations, and such other measures as may be necessary to insure attainment and maintenance of such primary or secondary standard, including, but not limited to, transportation controls, air quality maintenance plans, and preconstruction review of direct sources of air pollution."

EPA's existing regulations on the maintenance provision require the submittal of maintenance plans covering a twenty year period unless the Administrator approves a shorter period of not less than ten years. In determining the appropriate time period for any maintenance plan, the Administrator is to consider all relevant factors, including the reliability of projections of future emissions. See 41 FR 18382 (May 3, 1976) and 40 CFR 51.40. However, EPA currently believes that, in the case of areas with extended attainment dates (i.e., more than ten years after the date of SIP adoption), it is unreasonable to require states to submit quantitative maintenance plans based on an inventory and modeled projections as part of the initial SIP submittal. For these areas, EPA believes that such maintenance plans will be less speculative and more reliable if prepared shortly before attainment. However, in order to satisfy the statutory requirement of sections 110(a)(2)(B) and 172(a) that all SIPs include such measures as necessary to ensure maintenance of the standards, states must submit sufficient maintenance measures with the initial SIP submittal to allow EPA to make a qualitative assessment of the SIP's ability to ensure future maintenance. Such measures will be analyzed and supplemented after as necessary to enable states to develop complete, quantitative maintenance demonstrations shortly before the scheduled attainment date.

Therefore, EPA proposes to revise the maintenance regulations to indicate that they do not apply to long term attainment areas. Instead, as a matter of policy, EPA proposes to require such areas to submit qualitative maintenance demonstrations, including sufficient measures to allow EPA to conclude that the plans will ultimately ensure maintenance, at the time of initial SIP submittal, and in addition commit to submit maintenance plans just prior to the time the area is scheduled to attain the relevant standard. EPA proposes to require that all such maintenance plans cover a ten year period following attainment.

Further, EPA would like to note that in the bills currently under consideration

by Congress to amend the Clean Air Act, maintenance plans are not required at all until an area requests redesignation to attainment. Should the Act be amended to include this requirement, EPA will propose to further revise the maintenance regulations to make them consistent with the amended Act.

i. *Resources (sections 110(a)(2)(F) and 172(b)(7)).* Both section 172(b)(1)(F) and section 172(b)(7) require that a State provide assurances that all resources needed to carry out the plan provisions will be committed to that task.

j. *Analysis of plan effects and alternatives (section 172(b)(9)).* Section 172(b)(9) requires that plans provide for "public, local government, and State legislative involvement and consultation in accordance with section 174 (relating to planning procedures) and include (A) an identification and analysis of the air quality, health, welfare, economic, energy, and social effects of the plan provisions required by this subsection and of the alternatives considered by the State, and (B) a summary of the public comment on such analysis."

V. SIP Evaluation and Proposed Action

A. Description of the 1989 AQMP

1. Goals and Scope of the Plan

On March 17, 1989, the SCAQMD and the SCAG adopted a revised SIP, which had been in preparation for five years. This plan, known as the 1989 AQMP, is intended to meet the goals of the local agencies for attainment of the federal standards: 1997 for CO, and 2007 for ozone.

The plan was preceded by issuance of over 45 interim reports and approximately 5,500 pages of evaluation and analysis. Prior to adoption, the SCAQMD and SCAG participated in an extensive public outreach process of over 200 workshops and public presentations of the draft plan, and 10 public hearings. The ARB held a public hearing on the plan on June 22-23, 1989, and adopted the plan on August 15, 1989.

The SIP itself includes almost 40 volumes, covering control measures, air quality data, emissions inventories, economic assessments, air quality modeling, and reports on the comprehensive environmental impacts of the SIP.

The plan represents a high level of technical excellence and an aggressive commitment to the expeditious development and application of comprehensive controls on a vast array of stationary, area, and mobile sources. Because of the stringency of existing

State and local regulations and the need for massive further emission reductions in order to reach attainment, the plan depends to an unusual extent upon the successful development of new technologies and prompt commercial application of these technologies.

2. SIP Submittal

Following adequate public notice and public hearing, the ARB adopted the plan on August 15, 1989, and submitted it to EPA on August 18 as an official SIP revision. The State's submittal requested that EPA rely on as much of the plan as possible to fulfill EPA's FIP obligation. The State's resolution of adoption also requested that EPA conditionally approve those measures in the plan that do not contain legally enforceable commitments or technical demonstrations of feasibility sufficient to comply with the requirements of the Act.

The State made the following supplemental SIP submittal, accompanied by appropriate documentation of adoption following public notice and hearing:

1989 Conformity Chapter of appendix IV-G of the 1989 AQMP, adopted by SCAG on April 21, 1989, by SCAQMD on August 4, 1989, and by ARB on June 21, 1990, and submitted on July 19, 1990.

3. Control Measures

The South Coast plan itself contains no adopted regulations but does include detailed descriptions of, and adoption schedules for, 147 measures. The control measures are divided into three tiers. Tier I consists of near term controls that can be adopted and initially implemented by 1993 using currently available technological applications and management practices. Tier II provides for controls that require significant advancement of technology and vigorous regulatory intervention, with full adoption scheduled by 1998. Tier III requires the development of new technology to lead to almost complete elimination of reactive emissions from solvents, coatings, and most mobile sources. Full implementation of these controls would occur by 2007, at which time most vehicles would be powered by clean fuels. As discussed below, some of the Tier I control measures have been adopted as enforceable regulations and are being separately submitted to EPA as SIP revisions. EPA will act upon these regulations in separate Federal Register notices.

B. EPA Action on the Attainment Demonstrations

1. Ozone and Carbon Monoxide

The revised SIP projects attainment of the NAAQS for ozone in the year 2007 and attainment for CO in 1997. These ambitious attainment dates are consistent with EPA's analysis of the now controlling attainment date requirement (see discussion below at VII.A.2), given the enormity of the necessary emission reductions and the technical impossibility of achieving the reductions in advance of the schedule set forth in the AQMP.

In the case of ozone, controls must ultimately be developed and adopted in legally enforceable form for almost every controllable pollution source in the SCAB. Attainment of the CO NAAQS in the SCAB will require extraordinary reductions in emissions from motor vehicles. As a result, the CO plan must either resort to severe restrictions on motor vehicle use or have recourse to long-term measures. Such long-term measures can minimize socio-economic dislocation by establishing and funding alternatives to single-occupant vehicle use and by adopting requirements that would lead to the eventual replacement of the existing vehicle fleet with much cleaner cars and trucks. As discussed below in section VII, EPA's FIP cannot feasibly employ the transportation and land use control measures and public transit enhancements that are available to the State, and thus a later CO attainment date is proposed in the FIP than may be achieved under the SIP.

Despite EPA's agreement that the SIP's attainment goals are as soon as possible and meet the "expeditious" requirement of the Act, section 110(a)(2)(B) of the existing Act does not allow approval of the SIP's ozone and CO attainment demonstrations since (as described more fully below) they rely to a very great extent on reductions from measures that have not yet been fully developed or adopted in legally enforceable form. EPA therefore proposes to continue the part D disapproval of the attainment demonstration portion of the ozone and CO SIP. As a result of this disapproval, EPA proposes to retain the construction ban on major new sources and major modifications to existing sources of VOC and CO in the SCAB. See section 110(a)(2)(I) and 53 FR 1780 (January 22, 1988).

It should be noted that proposed CAA Amendments would allow removal of the construction ban upon enactment, and would establish new planning

requirements, including allowance for development, over time, of an attainment demonstration based on long-term measures.

C. EPA Action on Reasonable Further Progress

EPA is proposing to disapprove the SIP with respect to reasonable further progress because the legally enforceable measures in the SIP do not provide sufficient emission reductions to demonstrate RFP through the attainment year.

The AQMP projects very significant reductions in the early years of plan implementation. While most of these reductions would result from measures that have not yet been adopted in legally enforceable form, substantial reductions in actual emissions (taking into account projected growth in control categories) should occur due to enforceable regulations already adopted by the ARB and the SCAQMD.

The more significant of these enforceable measures include: (1) Enhancements to the State's inspection and maintenance ("smog check") program effective January 1, 1990; (2) more stringent California hydrocarbon and CO tailpipe standards adopted in June 1989; (3) a new State regulation for control of underarm deodorants; and (4) numerous new or revised SCAQMD rules—Regulation XV (an employer based trip reduction measure), Rule 1136 (wood furniture coatings), Rule 1125 (can and coil coatings), Rule 1151 (auto refinish coatings), Rule 1106 (marine vessel coatings), Rule 1113 (architectural coatings), Rule 1168 (adhesives), and Rule 1173 (refinery valves and flanges).

The State and local VOC and CO emission reduction achievements identified above are supplemented by major reductions in NO_x emissions attributable to new or revised SCAQMD rules affecting heaters, boilers, and turbines.

RFP in the SCAB in the near term will be assured by credits from the proposed FIP measures. The combined SIP/FIP credits are shown in section VII below. EPA's "backstop" measures or commitments should guarantee RFP over the long term and provide for eventual attainment of the NAAQS.

In section VII.D.2. below, EPA discusses a proposed SIP/FIP emissions tracking program. If this tracking program identifies a shortfall in achieving the SIP's actual emissions reduction target, EPA will implement additional controls and may, if appropriate, propose to impose sanctions on the State for failure to implement the approved SIP.

D. EPA Action on Control Measures

1. Criteria for Approval of Control Measures

a. *Provisions of the Act.* Sections 110 and 172 of the Act establish the general statutory framework for EPA approval of a plan or portions of a plan, including individual control measures. Among other requirements, these sections provide that the plan include: (1) Reasonably available control measures to be implemented as expeditiously as practicable; (2) necessary emission limitations, schedules, and compliance timetables; (3) assurances that the State will have adequate implementation personnel, funding, and authority; (4) evidence that the measures have been properly adopted by statute, regulation, ordinance, or other legally enforceable document; and (5) evidence that the responsible agencies are committed to implement and enforce the appropriate elements of the plan. The discussion that follows is based upon current EPA policy applying these provisions of the existing Act. If the Clean Air Act is amended before final rulemaking and includes new requirements that alter the criteria for control measure approval, EPA's proposed actions, including the timetable for submitting fully enforceable measures, will be revised to be consistent with the new statutory provisions.

b. *Current EPA approval criteria.* EPA's criteria for approval of control measures and commitments to adopt control measures are summarized in the general preambles to the 1979 and 1982 SIP revisions. See 44 FR 20372 et seq. (April 4, 1979), and 46 FR 7182 et seq. (January 22, 1981).

In general, EPA's policy calls for measures that are completely described, capable of achieving the reductions specified, and fully adopted by the appropriate implementing agency, with assurances that the agency has available resources to implement the control measures. EPA's policy also recognizes that certain transportation measures (i.e., those measures requiring extensive public input, discussion, and decision-making) may need considerably more time before they can be fully adopted, even though they should still be described, quantified, and scheduled at an early stage. For these measures, EPA believes it is reasonable to require (in addition to description and quantification of the measures) the appropriate implementing agencies to submit upfront commitments to complete the development and adoption processes on an expeditious schedule. A more complete discussion of the policy applicable to transportation measures

appears below in section V.D.5. EPA proposes to rely on these criteria in acting on the South Coast SIP submittal.

It is important to distinguish clearly between two possible EPA approval actions. First, EPA may fully approve and grant emissions reduction credit to those SIP measures that have been submitted to legally enforceable form. Examples of legally enforceable measures include adopted regulations, ordinances applying to land use, and fully funded and supported transportation system improvements.

Second, EPA may provisionally accept as part of the SIP but without assigned credit specific commitments to adopt measures in legally enforceable form. These commitments become enforceable parts of the SIP, but emission reduction credit is withheld until the measures are adopted in enforceable form, resubmitted, and approved as part of the SIP.

2. Control Measures in the South Coast SIP

a. *Introduction.* The plan for the South Coast submitted by the ARB includes 139 control measures and 8 contingency measures, along with commitments by the ARB, SCAQMD, and SCAG to develop, adopt, and ensure successful implementation of each control measure for which the agency is responsible.

The Technical Support Document for this action contains, as an attachment, ARB's *Staff Report on the 1989 Air Quality Management Plan for the South Coast Air Basin* (May 1989), which includes ARB's determination of whether or not each of the control measures met, at the time of the report's preparation, criteria for technical feasibility, legal authority, commitment, and resources (see Table 2 of the Staff Report).

EPA intends to approve and credit State and local regulations in separate notices as soon as the regulations are officially submitted as complete and approvable SIP revisions. EPA is also proposing to approve the 1989 Conformity Procedures, but no emissions reduction credit is claimed for this program (see section V.D.9.).

With very few exceptions, EPA is proposing approval of the SIP's commitments to the control measures. EPA realizes that the State and local agencies in the South Coast area have been able to take only preliminary steps thus far in developing most of these measures, due in large part to the extensive list of measures being considered for inclusion in the control strategy. However, the State and local agencies have committed to adopt in

legally enforceable form almost all of the AQMP's over 100 measures within the time frame that is expected to apply under imminent amendments to the Clean Air Act. In these circumstances, EPA believes that it is reasonable to approve the AQMP's commitments for their strengthening effect on the pre-existing SIP, rather than to disapprove them based on an insistence that every measure be fully adopted as an enforceable regulation at the time of the plan submission. This is the best approach to ultimately producing approvable regulations in the South Coast area. By approving the control measures only as far as they go now, EPA preserves and promotes the ongoing effort at the local level that is expected to result in the most expeditious program of emission regulation in the South Coast. EPA's approval of commitments responds to the unusual circumstances in the South Coast, the extreme nature of the problem requiring long term measures, and EPA's preference for locally initiated and implemented control measures. As a result of this approval, the commitments become federally enforceable. EPA will monitor closely the progress of the State and local agencies in completing the adoption of these measures in accordance with the schedules that have been submitted. Failure to adopt the measures on schedule (or substitute equivalent control measures) may result in imposition of the Clean Air Act sanctions for failure to implement the SIP and/or failure to make reasonable efforts to submit an approvable SIP.

A third group of measures included in the AQMP is scheduled for longer term adoption and implementation. The AQMP generally classifies these measures as Tier II and Tier III controls. EPA would prefer that these measures, too, were more completely described, quantified, and adopted, but EPA recognizes that the complexity of these measures (e.g., the technological developments required, the necessary coordination of a number of agencies, etc.) imposes practical limits at this time. For these measures, EPA proposes to give a limited approval to the commitments for their strengthening effect on the pre-existing SIP, and to require more complete commitments in the near term (i.e., by 1995) for the area to help satisfy the Act's RFP and attainment demonstration requirements and to show that "reasonable efforts" are being made to submit an approvable plan.

b. EPA's authority to approve individual control measures and

regulations in the absence of an approved attainment demonstration. In *Abramowitz v. EPA*, 832 F.2d 1071, 1079 (9th Cir. 1988), the Ninth Circuit left open the question whether, at the time EPA disapproves an attainment demonstration, "it may nonetheless approve individual control measures if they would strengthen the SIP and improve air quality." Here, where EPA is acting to disapprove the State's attainment demonstration, and therefore disapprove the SIP as a whole, EPA believes it has the authority to approve individual measures that strengthen the SIP. See *Michigan v. Thomas*, 805 F.2d 176 (6th Cir. 1986). (EPA may approve rules under section 110(a)(2) of the Clean Air Act, while disapproving them for failing to meet Part D Requirements.)

3. Proposed Action on ARB Control Measures

a. *Introduction to California's mobile source and fuels control measures.* California's motor vehicle program (CMVP) predates the first federal statute regulating motor vehicle emissions, the Motor Vehicle Air Pollution Control Act of 1965. In the Air Quality Act of 1967 (Pub. L. 90-148), Congress allowed California a waiver of the Air Quality Act's pre-emption section on motor vehicle emissions control because of California's pioneering efforts and unique problems. The 1977 amendments to the CAA expanded the flexibility granted to California in order "to afford California the broadest possible discretion in selecting the best means to protect the health of its citizens and the public welfare." (H.R. Rep. No. 294, 95th Cong., 1st Sess. 301-2 (1977)) So long as California's motor vehicle standards are "in the aggregate" at least as protective of public health and welfare as applicable federal standards, Title II of the current CAA authorizes the Administrator to waive the Act's general prohibition on state adoption of standards relating to the control of emissions from new motor vehicles or new motor vehicle engines, including controls or prohibitions respecting fuels or fuel additives. See sections 209(b) and 211(c)(4) and discussion below.

b. *California state law relating to motor vehicle emissions control.* California law reserves to the ARB most authorities for adopting and enforcing motor vehicle emission controls, including restrictions on fuels and fuel content. Under this authority, the ARB has adopted the regulations described below, which the South Coast SIP and FIP incorporate into their baseline. Also included in the baseline is the state's inspection and maintenance program, which is administered by the Bureau of

Automotive Repair under the Department of Consumer Affairs.

The plan also includes, as control measures, California's "Post-1987 Motor Vehicle Plan," (Post-1987 MVP), the 1988 update of which is described in appendix IV-F of the AQMP. At the time of AQMP publication (March 1989), the Post-1987 MVP comprised 11 measures already adopted, 18 measures under regulatory development, and 12 measures which may lead to further emission reductions.

California's Post-1987 MVP is rapidly evolving, however, in response to recent State legislation. In 1988, the California State Legislature enacted Assembly Bill 2595 (Sher), "The California Clean Air Act of 1988." This legislation included the findings:

(a) That despite the significant reductions in vehicle emissions which have been achieved in recent years, continued growth in population and vehicle miles traveled throughout California have the potential not only to prevent attainment of the state standards, but in some cases, to result in worsening of air quality; (b) that the attainment and maintenance of the state air quality standards will necessitate the achievement of substantial reductions in new vehicle emissions and substantial improvements in the durability of vehicle emissions systems; (c) that the burden for achieving needed reductions in vehicle emissions should be distributed equitably among various classes of vehicles, including both on- and off-road vehicles, light-duty cars and trucks, and heavy-duty vehicles, to accomplish improvements in both the emissions level and in-use performance and durability of all new motor vehicles; and (d) that the state board should take immediate action to implement both short- and long-range programs of across-the-board reductions in vehicle emissions which can be relied upon by the districts in the preparation of their attainment plans or plan revisions * * *. (California Health and Safety Code, section 43000.5)

The same bill required the ARB to undertake the following:

(1) By January 1, 1992, take necessary actions to achieve by December 31, 2000, at least a 55% reduction in reactive organic gases and a 15% reduction in NO_x from 1987 motor vehicle emissions, and achieve the maximum feasible reductions in particulates, CO, and air toxics;

(2) By November 15, 1989, consider adoption of regulations concerning aromatic content of vehicular fuel, diesel fuel quality, light-duty vehicle exhaust standards, new vehicle certification and durability standards, RVP standards for gasoline, and emissions standards for heavy-duty and medium-duty vehicles;

(3) By January 31, 1991, consider adoption of regulations governing

detergent content, emissions from off-highway vehicles, vehicle fuel composition, emissions from construction equipment and farm equipment, motorcycles, locomotives, utility engines, and marine vessels.

Assembly Bill 234 (Leonard), adopted in 1987, directed the Governor to establish the Advisory Board on Air Quality and Fuels (ABAQF) in order to evaluate and make recommendations to the legislature regarding the necessity and feasibility of using mandates or incentives to facilitate the introduction of cleaner transportation fuels in California. In its report to the legislature, published on October 2, 1989, the ABAQF concluded that the increased use of cleaner alternative fuels could be achieved by adopting air quality based performance standards for vehicle fuels. The recommended implementation method was termed "fuel pool averaging", a method the ABAQF found preferable to other methods such as mandates, incentives, or government supplied fuels. The ABAQF further recommended that the ARB adopt a fuel pool averaging regulation by September, 1990 which would ensure the use of sufficient alternative fuel to meet the air quality needs of California's urban areas, "and in particular be consistent with any alternative fuel elements of attainment plans required by state or federal clean air laws." In addition, the regulation should take into account the interrelationships of fuel, engine, and emission controls on the generation of vehicle emissions. Finally, the ABAQF recommended that if ARB fails to adopt fuel pool averaging regulations the California legislature should adopt legislation during its 1991 session that would achieve equivalent air quality benefits through the use of mandates and incentives.

In ARB's resolution of adoption of the AQMP on August 15, 1989, it was resolved "that the Board endorses the goal set forth in the (South Coast) Plan of ensuring the development and widespread use of low emitting and extremely low emitting vehicles by the years 2000 and 2007, respectively * * *". On December 14, 1989 ARB's Board endorsed the staff's intent to propose regulations requiring the sale of transitional low-emission, low-emission, and ultra-low-emission vehicles and the sale of clean fuels that allow these low emissions to be achieved. The low emission vehicle component of the proposal is designed to fulfill the intent of the recommendations of the AB 234 ABAQF. In section VII of this Notice, EPA is proposing an ultra clean motor vehicle "backstop" program similar in

concept to ARB's low-emission vehicle program.

c. *Proposed EPA action on emission reductions from the California motor vehicle plan.* As discussed above, section 209(b) requires that the Administrator waive the Act's prohibition against state adoption of certain motor vehicle controls, when the State proposes to establish or revise alternative State emission standards for new motor vehicles, new motor vehicle engines, or (in accordance with section 211) motor vehicle fuels or fuel additives.

The Administrator's granting of a waiver for any portion of the MVP reflects his determination that "the State standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards." Section 209(b) also provides that "No such waiver shall be granted if the Administrator finds that—

(a) The determination of the State is arbitrary and capricious,

(b) Such State does not need such State standards to meet compelling and extraordinary conditions, or

(c) Such State standards and accompanying enforcement procedures are not consistent with section 202(a) of this part.

The South Coast SIP takes credit, in its baseline projections of motor vehicle emissions, for the CMVP as it existed through the end of 1987. The SIP also includes as control measures motor vehicle regulations that have been more recently adopted by the State. Specifically, this includes the following measures: (1) The addition of Heavy Duty Gasoline Vehicles to the I&M program; (2) the establishment of a new diesel fuel quality standards; (3) lower ROG and CO standards for Gasoline Light Duty Vehicles; (4) lower PM emission standard for Medium Duty and Light Heavy Duty Diesel Trucks; (5) lower ROG, CO, and NOx emission standards for Medium Duty and Light Heavy Duty Trucks; and (6) improved I&M program and elimination of excess emissions from Light and Medium Duty Trucks (on-board diagnostics phase II; after market parts regulations; and revised recall regulations).

EPA expects that ARB will submit the CMVP for approval as a SIP revision. Upon final approval of the regulations, they will become a federally enforceable part of the SIP for the entire State.

In this notice, EPA is proposing to allow emission reduction credit for all of the CMVP regulations incorporated in the SIP's baseline. EPA accepts this baseline credit since:

(1) EPA continues to conclude that the overall program meets the 209(b) criteria for waiver;

(2) The State's program has been, and continues to be, successfully enforced at the State level; and

(3) EPA audits of the State's program generally substantiate the emissions reductions assumed.

Beyond the emission reduction credits for the existing CMVP, EPA is crediting the new passenger car and light-duty truck standards and the enhancements to the I/M program, i.e., the addition of heavy duty vehicles to the program and the increased cost limits, in its projection of future motor vehicle emissions. The Cali4 modeling assumptions do not address any potential incremental emission reductions which may accrue from the following measures which California has adopted: Phase II on-board diagnostics, enhanced emissions recall program, more stringent mechanic training and licensing, and the newly adopted medium-duty and light-heavy duty truck standards.

In addition, EPA believes that these credits may be allowed, prior to formal SIP approval, because the State's adopted regulations constitute not a response to specific SIP requirements of title I and part D of the Act, but rather a substitute for certain provisions of the Federal Motor Vehicle Control Program promulgated under title II. As such, the CMVP, in its entirety, may be viewed as establishing compliance with applicable Federal standards under title II of the Act, rather than as providing State compliance with SIP requirements of title I and part D.

This notice therefore expresses EPA's intent to assign emission reduction credits as part of the South Coast SIP and FIP for the CMVP regulations listed below. EPA's FIP assumes the appropriate emission reductions for the CMVP by incorporating it as part of EPA's MOBILE4 Motor Vehicle Emissions Model, as adapted for California, in projecting baseline motor vehicle emissions. The reader is referred to section VII.B for a further discussion of EPA's rationale and methodology for assigning collective credit for the CMVP, as a single entity, in this model, which is known as "CAL4."

The CMVP regulations proposed for credit today comprise chapter 3 of title 13, including the documents incorporated by reference, and chapter 33 of title 16 of the California Code of Regulations. Title 13, Motor Vehicles, includes the California's regulations for motor vehicles administered by the Department of Motor Vehicles (chapter

1), the Department of the California Highway Patrol (chapter 2), the Air Resources Board (chapter 3), and the Tariff Adjudication Board (chapter 4). Chapter 33 of title 16 contains the Bureau of Automotive Repair's (BAR) regulations respecting the I/M program. A copy of the CMVP regulations may be found in the Docket for this notice. Additional related materials (such as copies of test procedures) may be obtained from the ARB at 9528 Telstar Avenue, El Monte, California 91731.

Chapter 3 is divided into seven subchapters, which are in turn subdivided into articles and sections. This notice briefly summarizes the subject of each subchapter and article. Below the summary of each article is a listing of the number and title of each section. The copy of chapter 3 of title 16 and chapter 33 of title 16 in the TSD includes legislative authority citations and reference sections, as well as the history of the regulations (filing dates, effective dates, amendments and additions, editorial corrections, operative dates, and register numbers). Subchapter 1—Motor Vehicle Pollution Control Devices

This subchapter includes the exhaust emission standards and test procedures for regulated vehicles, i.e., passenger cars, light-duty trucks, medium-duty vehicles, heavy-duty engines and vehicles, and motorcycles, for various model years. Also included are: Reference to special test procedures for the certification and compliance of new, modifier-certified vehicles; labeling requirements; malfunction and diagnostic system requirements; standards and test procedures for crankcase emissions; standards and test procedures for fuel evaporative emissions; requirements for accreditation of emission control replacement parts; 1966-1970 light-duty NOx exhaust emission control device installation requirements; auxiliary gasoline fuel tank criteria and test procedures; reference to the standards and test procedures for conversion of motor vehicles to liquefied petroleum gas, natural gas, alcohol or alcohol/gasoline fuel use; emission control system warranty requirements; reference to the certification procedures for used, modifier-certified motor vehicles; and reference to the licensing requirements for vehicle emission test laboratories.

Article 1—General Provisions

Included in the general provisions are the definitions and classifications of motor vehicles. It should be noted that California's definitions differ from the federal motor vehicle definitions. Under federal regulations "heavy-duty vehicle" means any motor vehicle rated at more than 8,500 pounds gross vehicle weight rated at more than 8,500 pounds gross vehicle weight rating (GVWR) or that has a vehicle curb weight of more than 6,000 pounds or a basic vehicle frontal area in excess of 45 square feet; and "light-duty truck" means any motor vehicle rated at

8,500 pounds GVWR or less which has a vehicle curb weight of 6,000 pounds or less and a basic vehicle frontal area of 45 square feet or less, which is: (1) Designed primarily for purposes of transportation of property or is a derivation of such a vehicle, or (2) designed primarily for transportation of persons and has a capacity of more than 12 persons, or (3) available with special features enabling off-street or off-highway operation and use. Under California regulations "heavy-duty vehicle" means any motor vehicle having a manufacturer's GVWR greater than 6,000 pounds, except passenger cars; "light-duty" truck means any motor vehicle, rated at 6,000 pounds GVW or less, which is designed primarily for purposes of transportation of property or is a derivative of such a vehicle, or is available with special features enabling off-street or off-highway operation and use; and "medium-duty vehicle" means any heavy-duty vehicle having a manufacturer's GVWR of 8,500 pounds or less.

This article also provides for the submission of plans to the State by persons seeking approval for any emission control device. Finally, the article indicates that all provisions of the Chapter relating to "gasoline-powered" vehicles, except for fuel evaporative emissions requirements for 1973-1977 model-year heavy-duty gasoline-powered vehicles, apply to motor vehicles that have been modified to use fuels other than gasoline or diesel.

- Section 1990. Definitions.
- Section 1901. Classification.
- Section 1902. Test Procedures.
- Section 1903. Plans Submitted.
- Section 1904. Applicability to Vehicles Powered by Fuels other than Gasoline or Diesel.

Article 2—Approval of Motor Vehicle Pollution Control Devices (New Vehicles)

Article 2 contains the exhaust emission standards and references the test procedures for the following new motor vehicle categories: 1972 and subsequent model year heavy-duty gasoline vehicles; 1973 and subsequent heavy-duty diesel vehicles; 1975 through 1979 gasoline-fueled passenger cars; 1980 and newer passenger cars; 1975 and newer light-duty trucks; 1978 and newer medium-duty vehicles; and 1978 and subsequent model year motorcycles.

This article also sets forth the requirements for the certification of 1983 and subsequent model year federally certified light-duty motor vehicles for sale in California and for the certification and compliance of new, modifier-certified vehicles. The requirements for emission control labels for 1979 and subsequent model year vehicles and the labeling requirements for 1978 and prior model gasoline-powered light-duty vehicles and heavy-duty gasoline and diesel engines are specified. Also contained in this article is the requirement that 1983 and subsequent model year light and medium-duty vehicles equipped with a three-way catalyst system and feedback control be equipped with a malfunction indicator light and an on-board diagnostic system. Finally, the requirement for standards and test procedures for crankcase emissions and for fuel evaporative

emissions from all liquefied petroleum gas or gasoline-powered vehicles are included.

- Section 1950. Requirements.
- Section 1952. Exhaust Emission Standards and Test Procedures—1972 Heavy-Duty Gasoline-Powered Vehicles.
- Section 1955.1. Exhaust Emission Standards and Test Procedures—1975 through 1978 Model-Year Passenger Cars.
- Section 1955.5. Exhaust Emission Standards and Test Procedures—1975 Through 1978 Model-Year Light-Duty Trucks.
- Section 1956. Exhaust Emission Standards and Test Procedures—1973 and Subsequent Heavy-Duty Gasoline-Powered Vehicles.
- Section 1956.5. Exhaust Emission Standards and Test Procedures—1979 Model Year Heavy-Duty Engines and Vehicles.
- Section 1956.6. Exhaust Emission Standards and Test Procedures—1980 Model Year Heavy-Duty Engines and Vehicles.
- Section 1956.7. Exhaust Emission Standards and Test Procedures—1981 and through 1986 Model Heavy-Duty Gasoline-Powered Engines and Vehicles and 1981 through 1984 Model Heavy-Duty Diesel-Powered Engines and Vehicles.
- Section 1956.8. Exhaust Emission Standards and Test Procedures—1985 and Subsequent Model Heavy-Duty Engines and Vehicles.
- Section 1957. Exhaust Emission Standards and Test Procedures—1973 and Subsequent Model-Year Heavy-Duty Diesel-Powered Vehicles.
- Section 1958. Exhaust Emission Standards and Test Procedures—Motorcycles Manufactured on or after January 1, 1978.
- Section 1959. Exhaust Emission Standards and Test Procedures—1978 Model Medium-Duty Vehicles.
- Section 1959.5. Exhaust Emission Standards and Test Procedures—1979 Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles.
- Section 1960. Exhaust Emission Standards and Test Procedures—1980 Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles.
- Section 1960.1. Exhaust Emission Standards and Test Procedures—1981 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles.
- Section 1960.1.5. Optional NO_x Standards for 1983 and Later Model Passenger Cars and Light-Duty Trucks and Medium-Duty Vehicles less than 4000 lbs. Equivalent Inertia Weight (EIW) or 3751 lbs. Loaded Vehicles Weight (LVW).
- Section 1960.2. Special Standards for 1980 and 1981 Model Passenger Cars.
- Section 1960.3. Special Standards for 1981 and 1982 Model Light-Duty Trucks and Medium-Duty Vehicles, 0-3999 Pound Equivalent Inertia Weight.
- Section 1960.4. Special Standards for 1982 and Subsequent Model Passenger Cars, and 1983 and Subsequent Model Light-Duty Trucks and Medium-Duty Vehicles, 0-3999 Pound Equivalent Inertia Weight.
- Section 1960.5. Certification of 1983 and Subsequent Model Year Federally Certified Light-Duty Motor Vehicles for Sale in California.
- Section 1960.15. Reference to Section 1960.1.5.

Section 1964. Special Test Procedures for Certification and Compliance—New Modifier Certified Motor Vehicles.

Section 1965. Emission Control Labels—1979 and Subsequent Model Year Motor Vehicles.

Section 1965.5. Device Identification—1978 and Prior Model Light-Duty Vehicles.

Section 1966. Device Identification—1978 and Prior Model Heavy-Duty Gasoline Engines.

Section 1967. Device Identification—1978 and Prior Model Heavy-Duty Diesel Engines.

Section 1968. Malfunction and Diagnostic System for 1988 and Subsequent Model Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles with Three-Way Catalyst Systems and Feedback Control.

Section 1970. Fuel Evaporative Emissions—1973 through 1977 Model-Year Heavy-Duty Gasoline-Powered Vehicles.

Section 1975. Standards and Test Procedures for Crankcase Emissions.

Section 1976. Standards and Test Procedures for Fuel Evaporative Emissions from Liquefied Petroleum Gas or Gasoline-Powered Vehicles.

Article 3—Accreditation of Motor Vehicle Pollution Control Devices (Used Motor Vehicles)

This article sets forth the general requirements which must be met to obtain accreditation for emission control devices intended for installation on used motor vehicles. The exhaust emission standards, test procedures and installation requirements for emission control devices designed to reduce NOx emissions from 1966 through 1970 model-year gasoline powered light-duty vehicles are specified. The requirements and test procedures for the certification of an auxiliary gasoline fuel tank, specifically, the standards for the fuel evaporative control system and the tank fill pipe and opening, are included. Finally, the article contains the standards and test procedures for the accreditation of non-mandatory exhaust emission control devices for use on used 1955 and subsequent model-year vehicles.

Section 2001. Requirements.

Section 2002. Additional Criteria for Used Vehicle Devices.

Section 2005. Exhaust Emissions and Test Procedures—Control of Oxides of Nitrogen Emitted from 1966–1970 Light-Duty Vehicles.

Section 2007.5. Termination of the 1955 through 1965 Model Year Light-Duty Motor Vehicle Exhaust Emission Control Device Requirements.

Section 2008. 1966–1970 Light Duty NOx Exhaust Emission Control Device Installation Requirements.

Section 2009. Auxiliary Gasoline Fuel Tank Criteria and Test Procedures.

Section 2010. Exhaust Emission Standards and Test Procedures—Non-Mandatory Devices for Used 1955 and Subsequent Model-Year Vehicles.

Article 4—Certification of Crankcase Emission Control Devices

Repealed.

Article 5—Approval of Systems Designed to Convert Motor Vehicles To Use Fuels Other Than the Original Certification Fuel

This article references the standards and test procedures for approval of systems designed to convert motor vehicles to use liquefied petroleum gas, natural gas, alcohol or alcohol/gasoline fuels.

Section 2030. Liquefied Petroleum Gas or Natural Gas.

Section 2031. Alcohol or Alcohol/Gasoline Fuels.

Article 6—Emission Control System Warranty

The purpose of this article is to interpret and make specific the statutory emissions warranty contained in the California Health and Safety Code. The article applied to California certified 1973 and subsequent model year motorcycles, light-duty, medium-duty, and heavy-duty vehicles registered in California, and California certified motor vehicles engines used in such vehicles. "Useful life", "warranted part", and "vehicle or engine manufacturer" are defined. Also included are the warranty or vehicle owner information requirements, the manufacturer's obligations, the vehicle owner's obligations, and the provision of a mechanism for mediating unresolved emissions warranty disputes between vehicle or engine owners and dealers or manufacturers.

Section 2035. Purpose, Applicability, and Definitions.

Section 2036. Warranty and Vehicle Owner Information.

Section 2037. Motor Vehicle and Motor Vehicle Engine Manufacturer's Obligations.

Section 2038. Vehicle Owner Obligations.

Section 2039. Vehicle Inspection Program.

Section 2040. Mediation; Finding of Defect.

Section 2041. Exclusions.

Section 2042. Severability.

Section 2045. Catalyst Change Requirements.

Section 2046. Defective Catalyst.

Article 7—Procedures for Certifying Used Modifier-Certified Motor Vehicles and Licensing Requirements for Vehicle Emission Test Laboratories

The references for the emission standards and procedures for the certification of used (1975 and later) modifier-certified motor vehicles in California and the licensing requirements for vehicle emission test laboratories are provided in this article.

Section 2047. Certification Procedures for Used Modified-Certified Motor Vehicles.

Section 2048. Licensing Requirements for Vehicle Emission Test Laboratories.

Subchapter 2—Enforcement of Vehicle Emission Standards and Surveillance Testing

This subchapter contains assembly-line test procedures; the procedures for enforcement of new and in-use vehicle standards; provisions for surveillance testing; and exemptions to the certificate of compliance requirements.

Article 1—Assembly-Line Testing

This article specifies the assembly-line test procedures for new passenger cars, light-duty trucks and medium-duty vehicles subject to

certification and manufactured for sale in California. The procedures for federally certified light-duty vehicles for sale in California are also included.

Section 2052. Assembly-Line or Pre-Delivery Test Procedures—1974 Light-Duty Vehicles.

Section 2053. Assembly-Line or Pre-Delivery Test Procedures—1975 Model-Year Gasoline-Powered Cars and Light-Duty Trucks.

Section 2054. Assembly-Line or Pre-Delivery Test Procedures—1976 Model-Year Gasoline-Powered Passenger Cars and Light-Duty Trucks.

Section 2055. Assembly-Line or Pre-Delivery Test Procedure—1977 Model-Year Gasoline-Powered Passenger Cars and Light-Duty Trucks.

Section 2056. Assembly-Line or Pre-Delivery Test Procedure—1978 Model-Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles.

Section 2057. Assembly-Line or Pre-Delivery Test Procedure—1979 Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles.

Section 2058. Assembly-Line Test Procedures—1980 Model Year.

Section 2059. Assembly-Line Test Procedures—1981 Model Year.

Section 2060. Assembly-Line Test Procedures—1982 Model Year.

Section 2061. Assembly-Line Test Procedures—1983 and Subsequent Model Years.

Article 2—Enforcement of New and In-Use Vehicle Standards

The procedures for monitoring the compliance of motor vehicles with applicable laws and regulations, when manufactured and in consumer use, are contained in this article. Specifically, the article provides that: The executive officer of the ARB may order a vehicle manufacturer to make available for compliance testing and/or inspection a reasonable number of vehicles selected at random; the executive officer may order corrections of the reporting of assembly-line inspection testing results or improper assembly-line inspection testing or may order correction of vehicles not in compliance with applicable laws, emission standards, or test procedures. Finally, the article provides that all 1978 and subsequent model-year passenger cars, light-duty trucks, medium and heavy-duty vehicles and motorcycles, certified for sale and registered in California are subject to the in-use vehicle emission-related defects reporting procedures and recall regulations.

Section 2100. Purpose.

Section 2100.5. Purpose.

Section 2100.6. Purpose.

Section 2101. Compliance Testing and Inspection—New Vehicle Selection, Evaluation, and Enforcement Action.

Section 2102. Selection of Vehicles.

Section 2103. Evaluation.

Section 2104. Action 2103.

Section 2105. Compliance with Applicable Laws.

Section 2106. New Vehicle Assembly-Line Inspection Testing.

- Section 2107. Assembly-Line Quality-Audit Testing.
- Section 2108. Order of Executive Officer.
- Section 2109. New Vehicle Recall Provisions.
- Section 2110. Remedial Action for Assembly-Line Quality Audit Testing of Less Than a Full Calendar Quarter of Production.
- Section 2111. In-Use Vehicle Emissions-Related Defects Reporting Procedures.
- Section 2112. In-Use Vehicle Emissions-Related Recall Regulations.
- Section 2113. In-Use Vehicle Recall Provisions.

Article 3—Surveillance Testing

This article provides for the observation of assembly-line testing by the State and allows the ARB to conduct its own assembly-line tests. It prohibits the sale of a new or used passenger car, light-duty truck, or medium-duty vehicle unless the vehicle's ignition timing, idle speed, and idle mixture are set to the retrofit device (in the case of a used vehicle) or vehicle manufacturer's specifications, the required exhaust and evaporative emission controls are operating properly, and the vacuum hoses and electrical wiring for emission controls are correctly routed and connected. Finally, it authorizes the inspection and surveillance of new and used motor vehicles at dealerships to verify conformity with these requirements.

- Section 2150. Assembly-Line Surveillance.
- Section 2151. New Motor Vehicle Dealer Surveillance.
- Section 2152. Surveillance of Used Cars at Dealerships.
- Section 2153. Reimbursement of Costs.

Article 4—Certificates of Compliance

This article specifies that certificates of compliance are not required upon transfer of ownership and registration of motorcycles, diesel-powered passenger cars, light-duty diesel trucks, medium-duty diesel vehicles, and heavy-duty diesel vehicles, nor upon initial registration of these vehicles with odometer readings of over 7,500 miles.

Section 2160. Certificates of Compliance Exemptions—New and Used Diesel Vehicles Over 6,000 Pounds Gross Weight Rating.

- Section 2161. Certificates of Compliance Exemptions—New and Used Diesel Vehicles, 6,000 Pounds or Less Gross Weight Rating.
- Section 2162. Certificates of Compliance Exemptions—New and Used Motorcycles.
- Section 2163. Certificates of Compliance Exemptions for Used Motorcycles.
- Section 2164. Certificates of Compliance Exemptions for Used Diesel-Powered Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles.
- Section 2165. Certificates of Compliance Exemptions for Used Heavy-Duty Diesel Vehicles.

Subchapter 3—Highway and Mandatory Inspection Emission Standards

Included in this subchapter are: the HC and CO exhaust emission standards for light-duty (6,000 lbs. or less GVW) and medium-duty (8,500 lbs. or less GVW) gasoline-powered

vehicles which are used for inspection in the idle mode at California Highway Patrol roadside inspection lanes; the HC, CO, and NO_x exhaust emission standards for idle and cruise modes for light and medium-duty gasoline vehicles subject to mandatory inspection; and the guidelines for the issuance of a certificate of compliance for vehicles included in the Methanol Fuel Experimental Program.

- Section 2175. Highway Exhaust Emissions—Light-Duty Vehicles.
- Section 2175.5. Exemption of Vehicles.
- Section 2176. Mandatory Inspection Exhaust Emissions—Light-Duty and Medium-Duty Vehicles.
- Section 2177. Guidelines for Issuance of Certificate of Compliance.

Subchapter 4—Criteria for the Evaluation of Motor Vehicle Pollution Control Devices and Fuel Additives

This subchapter provides the criteria for the evaluation of prototype motor vehicle control devices and fuel additives proposed for sale in California and specifies the requirements for the sale of aftermarket parts in the state.

Article 1—Fuel Additives and Prototype Emission Control Devices

This article applies to all motor vehicle fuel additives and prototype vehicle pollution control devices proposed for sale in California. It specifies that the policy of the state board is to evaluate all ideas, proposals, devices, and fuel additives submitted to the board as possible means for reducing emissions from motor vehicles. Finally, it contains the requirements for submitting a proposal, evaluation and test procedures, and a fee schedule for testing fuel additives.

- Section 2200. Applicability.
- Section 2201. General Policy.
- Section 2202. Performance Requirements.
- Section 2203. Submission Requirements.
- Section 2204. Initial Evaluation.
- Section 2205. Laboratory Tests.
- Section 2206. Fee Schedule.
- Section 2207. Observation of Laboratory Tests.

Article 2—Aftermarket Parts

This article applies to aftermarket parts which are sold, offered for sale, or advertised for sale for use on motor vehicles which are subject to California or federal emissions standards. The requirements for replacement parts and add-on and modified parts are specified. Also included are provisions for surveillance and enforcement actions.

- Section 2220. Applicability.
- Section 2221. Replacement Parts.
- Section 2222. Add-on Parts and Modified Parts.
- Section 2224. Surveillance.
- Section 2225. Enforcement Action.

Subchapter 5—Standards for Motor Vehicle Fuels

This subchapter contains various standards for gasoline and diesel fuel and the gasoline sampling procedures for the determination of Reid vapor pressure (RVP).

Article 1—Standards

This article prohibits the sale or supply within the South Coast Basin of gasoline having a degree of non-saturation greater than that indicated by a Bromine Number of 30. The Reid vapor pressure of gasoline in California air basins except the Northeast Plateau is limited to a maximum of 9.0 pounds per square inch during the summertime control period. The length of the control period varies with the particular air basin. See further discussion of Reid vapor pressure control under the proposed FIP in section VII.B.

The sulfur content of unleaded gasoline, and of motor vehicle diesel fuel sold in the SCAB or Ventura County before October 1, 1993 is limited to maximum of 300 parts per million (ppm) by weight for unleaded gasoline and 500 ppm by weight for diesel fuel. On or after October 1, 1993 the sulfur content of vehicular diesel fuel is limited to 500 ppm by weight and the aromatic hydrocarbon content of vehicular diesel fuel is limited to a maximum of 10 percent by volume for the entire state. (See discussion of "New Diesel Fuel Quality Standard" under 3.f.).

This article prohibits the addition of manganese or any manganese compound, including the compound methylcyclopentadienyl manganese tricarbonyl (MMT), to unleaded gasoline. The limitations on the lead content of leaded gasoline contained in this article are less stringent than Federal requirements.

Finally, it should be noted that pertinent test methods are referenced throughout this article.

- Section 2250. Degree of Non-Saturation for Gasolines.
- Section 2251. Reid Vapor Pressure for Gasoline.
- Section 2252. Sulfur Content of Unleaded Gasoline, and of Motor Vehicle Diesel Fuel Sold in the South Coast Air Basin or Ventura County Before October 1, 1993.
- Section 2253.2. Lead in Gasoline.
- Section 2254. Manganese Additive Content.
- Section 2255. Sulfur Content of Diesel Fuel.
- Section 2256. Aromatic Hydrocarbon Content of Diesel Fuel.

Article 2—Sampling and Testing Procedures

This article contains the procedures to be used for obtaining representative samples of gasoline for the purpose of testing for RVP.

- Section 2261. Gasoline Sampling Procedures for RVP.

Subchapter 6—Certification of Exhaust Emission Control Devices for Controlling Carbon Monoxide from Portable and from Mobile Internal Combustion Engines Used in Enclosed Structures

Not related to TITLE II requirements.

Subchapter 7—Specifications for Fill Pipes and Openings of Motor Vehicle Fuel Tanks

This subchapter contains the requirements that new 1977 and subsequent model-year gasoline-powered motor vehicles shall not be sold or registered in California unless such vehicles comply with ARB's specifications for fill pipes and openings of motor vehicle fuel

tanks. Motorcycles are exempted from this requirement.

Section 2290. Requirements.

California Inspection and Maintenance (I/M) Program. EPA is proposing to allow emission reduction credit for the California I/M or "smog check" program. Under section 172(b)(1)(B) of the CAA, all major urban areas which needed an extension beyond 1982 to attain the standard for ozone or carbon monoxide were required to implement an I/M program by December 31, 1982. The enabling legislation for California (Presley; Stats. 1982, Ch. 892) was not enacted into California law until September 10, 1982. On September 17, 1982 the ARB submitted as a SIP revision the I/M enabling legislation along with a schedule to implement the program by March 1984 and a commitment to a 25% reduction in exhaust emissions from light-duty vehicles by December 31, 1987.

In 1988 the California legislature reauthorized the I/M program and approved substantial revisions which further enhanced the program (Presley; Stats. 1988, Ch. 1544). The TSD contains pertinent sections of part 56, division 26, of the Health and Safety Code which incorporate these revisions, as well as pertinent sections of chapter 33, title 16, of the California Code of Regulations and other Bureau of Automotive Repair documents.

I/M Program Area Coverage. The original Presley bill provided that any air pollution control district located within a federally designated urban nonattainment area could request the Department of Consumer Affairs to implement a motor vehicle inspection program within its area of jurisdiction. In March 1984 the I/M program was implemented in all or portions of the Bay Area and the SCAQMD and in the Yolo-Solano, Placer, Sacramento, San Diego, and Ventura Air Pollution Control Districts. The program was implemented in Fresno County in October 1984 and in Kern in 1986. Tulare, San Joaquin, Stanislaus, and Santa Barbara County, after an amendment to the original legislation allowed a district in any nonattainment area, whether urban or not, to request the program, are now included. Approximately 12 million vehicles are subject to the program.

Adequacy of Control Strategy. EPA policy pertaining to I/M programs, which was updated in a Notice published on January 22, 1981 (46 FR 7182), calls for I/M program SIP submittals that contain the rules and regulations and all other programmatic

elements which could affect the ability of the I/M program to achieve the minimum emission reduction requirements. More specifically, EPA calls for the I/M program to contain 10 critical elements which were enumerated in the Notice. The California program contains these elements. Our review of these elements found them consistent with EPA policy, as discussed below.

1. Inspection test procedures.

California uses an idle test for pre-1980 model year vehicles and a two-speed idle test for 1980 and newer vehicles. Since the use of fully computerized "Test Analyzer System" (TAS) analyzers is required, the emissions measurement procedure is entirely automated. Provisions are made for "second-chance" testing for 1975 or newer model year vehicles which fail the test including a restart procedure for 1981-86 Fords and 1984-85 Honda Preludes. The law provides that an air district may request BAR to implement loaded mode testing in its area. No district has done so to date.

2. Emission standards.

California's I/M emission standards are among the most stringent in the country. A table listing the maximum values for the idle, 2500 rpm, and 40 mph cruise mode for the 21 emission standards categories is contained in the TSD.

3. Inspection station licensing requirements.

To become a licensed smog check station, an automotive repair dealer registered with the BAR must submit an application and a \$100 license fee to BAR, have at least one licensed inspector, employ at least one smog check mechanic, pass an inspection of the station facility, and have the required test and repair equipment. The licensed station must retain the required records for 3 years, submit to audits, and comply with all other BAR regulations and procedures.

4. Emission analyzer specification and maintenance/calibration requirements.

Since the start of the program, all smog check stations were required to use the full computerized BAR-84 test analyzer system (TAS). Effective July 1, 1990 licensed stations are required to use the BAR-90 analyzer which is the state-of-the-art in computerized analyzers. Government fleet stations have until January 1, 1992 to comply with this requirement. Stations are required to purchase a five year warranty with their BAR-90 analyzer to assure that maintenance and repairs are performed. BAR's list of approved analyzers includes four manufacturers (Sun, Bear, Allen and ESP).

5. Recordkeeping and record submittal requirements.

BAR regulations require all Smog Check stations to maintain copies of all certificates of compliance, repair orders, and vehicle inspection reports for three years. Data is collected from the stations by BAR's QA contractors. BAR distributes monthly data summaries which include a TAS data summary, emissions reduction analysis, and emissions failure rate analysis. The TAS summary reports inspection statistics for each geographic area, including emissions failure rates, visual and functional tampering inspection failure rates (by component) and waiver rates.

6. Quality control, audit and surveillance procedures.

Unannounced inspection station audits are performed quarterly by private contractors. The QA auditor reviews inspection records and certificates of compliance, performs a low-range and mid-range gas audit of the station's analyzer(s), picks up the TAS data, and checks for compliance with general program requirements, such as current licenses and official signs. Analyzer failures and other major problems identified during the audit must be reported to the local BAR office on the same day. BAR also performs its own follow-up visits and covert audits both at random, and at stations that have been identified as potential poor performers based on the Station/Mechanic Evaluation Reports generated from the TAS data or consumer complaints. Violations of regulations are reviewed through office and education conferences. BAR is authorized to issue citations and assess administrative fines. BAR may pursue administrative action to suspend or revoke a station's license or the qualification/license of a mechanic, inspector or business fleet operator. Finally, in the case of severe violations BAR may present its case to the local district attorney's office or the state attorney general for civil or criminal prosecution.

7. Procedures to assure that noncomplying vehicles are not operated on the public roads.

The Department of Motor Vehicles (DMV) is responsible for identifying the motor vehicles which must undergo inspection, notifying the vehicle owners, and enforcing the program through vehicle registration. The DMV notifies each vehicle owner when the vehicle requires submission of a smog check certificate as a condition of vehicle registration renewal.

8. Other official program rules, regulations and procedures.

California law requires that BAR contract for enough referee stations to accommodate at least 2 percent of the vehicle

population subject to the program. Referee stations determine if smog certificates should be issued to vehicles that for various reasons, e.g., engine changes, cannot receive certificates at licensed stations. Effective January 1, 1990 only referee stations can issue cost exceedance waivers. Referee stations also provide motorists with free, independent checks and evaluations of their vehicles when certain test disputes or conditions exist. If the referee determines that a smog check station has inspected the vehicle improperly, BAR is informed of the findings for possible enforcement action.

9. *A public awareness plan.* Through its information office, BAR, with the assistance of a public relations firm, promotes consumer awareness of the Smog Check Program in a number of ways, such as arranging for anniversary events, elementary school educational programs and speaking engagements; and producing press releases, news stories, and television and radio public service announcements. In addition, when the program is scheduled for implementation in a new geographic area, special workshops are held prior to the effective implementation date. BAR also maintains a toll-free "hot-line" for consumers.

10. *A mechanics training program.* The California program requires that in order to become a qualified smog check mechanic, the applicant must demonstrate eligibility to take BAR's qualification examination by submitting proof of experience or by successfully completing the Clean Air Car course (developed and approved by BAR) and passing a qualification examination. BAR has two qualification examinations, a limited examination which qualifies the mechanic to test, inspect, adjust, and repair the emission control systems on only 1979 and earlier model-year vehicles, and an unlimited examination which permit work on the emission control systems on all vehicles.

Program Compliance With Minimum National Requirements. The California I/M program was audited by EPA in 1986. As part of the audit, a re-analysis was performed that showed that the program was exceeding the minimum national I/M requirements.

d.-e. *Proposed EPA Action on ARB Commitments.* The State currently plans to adopt the following proposed control measures. These measures include:

- (1) Further evaporative control/larger canisters for all gasoline Vehicles;
- (2) Emission standards for new Heavy Duty Construction Equipment;
- (3) Lower gasoline vapor pressure standard;

(4) Lower NO_x standard for Gasoline Light Duty Vehicles;

(5) Lower NO_x standard for Heavy Duty Diesel Trucks;

(6) Retrofit particle traps on Heavy Duty Diesel Trucks;

(7) Emission standards for Off-Road Motorcycles.

If any of these measures is adopted as an enforceable regulation and submitted as a SIP revision before the final FIP is issued, EPA intends to propose approval of the regulation in a separate notice unless the State measure is, at that time, less stringent than an applicable federal measure imposed under the FIP. EPA would simultaneously propose to adjust the final FIP mobile source control measures to reflect the added SIP credits and to avoid duplicating the State controls with Federal measures.

f. *Mobile source control measures—on-road vehicles and fuels—(1) Addition of heavy duty gasoline vehicles to the I/M program.* Effective January 1, 1990 heavy duty gasoline vehicles were required to undergo an exhaust emission tailpipe test and anti-tampering inspection, biennially, as is required of other vehicles already in the program. The regulations, including the cutpoints for the tailpipe test, are included in the TSD.

(2) *Establish new diesel fuel quality standard.* On November 17, 1988 ARB adopted regulations which lowered the aromatic and sulfur content of diesel fuel. On or after October 1, 1993 the maximum allowable sulfur content of vehicular diesel fuel is 500 parts per million by weight. This is the same limit that was already in effect in the SCAB and Ventura County. The regulations also limit the maximum allowable aromatic hydrocarbon content to 10 percent by volume effective on the above date.

Under section 211(c)(4)(B) California is allowed to prescribe and enforce its own regulations with respect to motor vehicle fuels.

(3) *Lower ROG and CO Standards for Gasoline Light-Duty Vehicles.* Revised HC and CO exhaust emission standards for passenger cars and light-duty trucks were adopted on June 8, 1989. The 50,000 mile certification standards are as follows:

Vehicle class	Standard
Passenger cars and light-duty trucks, (0-3750 lbs. loaded vehicle weight (LVW)).	0.25 g/mi non-methane (NM) HC 3.4 g/mi CO
Light-duty trucks, (3751-5750 lbs. LVW).	0.32 g/mi NMHC 4.4 g/mi CO

The new regulations also added a 100,000 mile certification standard:

Vehicle class	Standard
Passenger cars and light-duty trucks, (0-3750 lbs. LVW).	0.31 g/mi NMHC 4.2 g/mi CO
Light-duty trucks, (3751-5750 lbs. LVW).	0.40 g/mi NMHC 5.5 g/mi CO

The standards are phased in beginning with the 1993 model year. Each manufacturer must certify a minimum of 40% of its 1993 model year vehicles, 80% of its 1994 model year vehicles, and 100% of its 1995 and subsequent model year vehicles to the standards. Compliance with the standards in-use is also phased-in. 100% compliance will be required beginning with the 1997 model year. Actual testing for in-use compliance will be limited to vehicles which have accumulated less than 75,000 miles.

(4) & (5) *Lower PM Emission Standard for Medium-Duty and Light-Heavy Duty Diesel Trucks and Lower ROG, CO, and NO_x Emission Standards for Medium-Duty and Light-Heavy Duty Trucks.* The ARB adopted in June 1990 more stringent emission standards and test procedures for trucks ranging from 6,000 to 14,000 lbs. gross vehicle weight (GVW). All trucks in this weight category will be reclassified as medium-duty vehicles. Both 50,000 and 120,000 mile standards have been adopted.

Manufacturers have the option to conduct emission testing of incomplete vehicles on a chassis or engine dynamometer at a loaded test weight. However, all other vehicles up to 14,000 lbs. would be emission tested on a chassis dynamometer at a loaded test weight. The load is curb weight plus 50 percent of the load carrying capacity of the vehicle (or the average of the vehicle's curb weight and GVW.) In addition, the NO_x standard for light-duty trucks, 3751-5750 lbs. LVW, was lowered from 1.0 to 0.7 g/mi to be consistent with the adopted passenger car NO_x standard and the medium-duty vehicle NO_x standard.

Implementation of the emission standards is scheduled from 1995 through 1998. Certification compliance will be phased-in over two years (50 percent in the 1995 model year and 100 percent in the 1996 model year). Less stringent in-use compliance is required for the 1995, 1996 and 1997 model years. Complete certification and in-use compliance is slated for the 1998 model year. Summaries of the emission standards and implementation schedule along with the regulations, are included in the TSD.

(6) *Improved I/M program and elimination of excess emissions from*

Light and medium-duty trucks. ARB believes that the short and long term improvements to the I/M program will reduce consumer related excess emissions. Other measures such as the revised in-use recall program and on-board diagnostic systems—phase II (ORB-II), are expected to result in increased durability of emission control systems and correct manufacturer related excess emissions. ARB believes the combination of these programs will result in the elimination of excess emissions so that 1995 and newer model year vehicles will meet certification standards in-use.

Not all of the proposed improvements to the I/M program have been adopted by the legislature or where the authority exists into regulation. Two significant changes to the program were implemented January 1, 1990. First, the repair cost limit was raised from \$50 for all model year vehicles subject to the program to the following:

Model years	Repair cost limit
1966-1971.....	\$50
1972-1974.....	\$90
1975-1979.....	\$125
1980-1989.....	\$175
1990 +	\$300

Second, waivers can only be issued by the Bureau of Automotive Repair's contractor run referee stations rather than authorized "Smog Check" stations. This requirement should result in more uniform criteria being applied to the issuance of cost waivers. As a result of these changes EPA expects that the waiver rate will decrease from its current level of approximately 20 percent to 10 percent.

EPA applauds the State's adoption of various measures designed to increase emission control durability and reduce excess emissions. ARB has not, however, submitted sufficient documentation to substantiate the assumption that 1995 and newer vehicles will meet their certification standards in-use. EPA is proposing to credit the OBD-II requirement. Specific credits will be assigned to this measure as soon as the methodology which is being developed in conjunction with EPA's rulemaking in this area, is finalized.

(7) *Heavy duty diesel smoke enforcement.* The projected adoption date for the heavy-duty diesel smoke enforcement program has been delayed until October, 1990. This program has undergone substantial revision since it was submitted to EPA as part of the Post-1987 CMVP. EPA will comment on

this program when the revised program is submitted for SIP approval.

(8) *New low emitting fuel buses.* Beginning with the 1991 model year the PM standard for urban bus engines will be 0.1 g/Bhp-hr. Control of particulate emissions from heavy-duty diesel engines is expected to be achieved through the use of particulate traps. Since this control technology is still under development, alternatives for meeting the standard, such as the use of methanol fueled buses are being considered. The use of methanol is expected to reduce NO_x as well as PM emissions. Although the actual mass of HC emissions may increase, ROG emissions are expected to remain the same because the reactivity of the HC emissions is lowered by approximately the same rate. The emission benefits to be obtained from this measure need to be re-evaluated after an updated assessment is obtained regarding the types of buses that will be available and that are likely to be purchased in 1991 and later years.

(9) *Lower gasoline vapor pressure.* Current State regulations require that the RVP of gasoline not exceed 9.0 psi for the seven month period of April 1 through October 31 in the South Coast basin. To further control evaporative emissions from diurnal, hot soak, refueling and running losses, ARB has proposed to lower the maximum allowable RVP to 8.0 psi for same control period beginning in 1992. Adoption of revisions to the regulation is scheduled for September 1990.

Under EPA's final rulemaking for volatility control a RVP limit of 9.0 psi for the month of May and a 7.8 psi limit for June through September 15 will be in effect for the entire state of California beginning in 1992. In section VII of this notice, as one its FIP measures, EPA is proposing more stringent volatility controls for the South Coast.

(10) *Further evaporative control/larger canisters for all gasoline vehicles.* ARB is considering revisions to its current evaporative emissions test procedure. The proposed changes include increasing the duration and temperature range of the diurnal heat build, modifications to the hot soak procedure, and the inclusion of pretest preconditioning operation. The net result of the proposed changes would be to increase the difficulty in meeting the 2.0 gram per test HC standard and will require the evaporative emission control systems to be more effective. Implementation of this measure is currently proposed for 1995.

(11) *Lower NO_x standard for gasoline light-duty vehicles.* As part of its Low-emission Vehicles/Clean Fuels Program,

ARB has proposed a 0.20 g/mi NO_x emission standard for its light-duty low emission vehicles (LEVs) and ultra-low emission vehicles (ULEVs). Phase-in of LEVs begins with the 1997 model year.

(12) *Lower NO_x standard for heavy-duty diesel trucks.* Effective with the 1991 model year, the NO_x standard for heavy-duty diesel trucks is 5.0 g/bhp-hr. ARB is considering lowering the standard to 4.0 g/bhp-hr beginning with the 1997 model year. ARB estimates that half of the heavy-duty vehicles on the road are California registered.

(13) *Retrofit particle traps on heavy-duty diesel trucks.* This measure would reduce particulate emissions from heavy-duty trucks already in service by requiring the use of particulate traps. A demonstration program is scheduled to begin in 1991.

(14) *Low-emission vehicles, clean fuels, and gasoline.* This proposed State program, scheduled for adoption in September 1990, is discussed in connection with EPA's proposed Ultra Clean Motor Vehicle Program (see section VII.G., below).

g. Mobile source control measures—off-road vehicles—(1) Off-road heavy-duty construction equipment. As with the move toward low and ultra-low emission on-road vehicles, ARB intends to propose standards that will promote the use of clean fuels and the development of emission control technologies for off-road vehicles. Certification test procedures and emission standards for heavy-duty (40 HP and over) construction and farm equipment beginning with the 1995 model year have been proposed. The proposal also includes requirements for pre-1995 model year engines rebuilt after 1995.

(2) *Emission Standards for off-road motorcycles.* This measure would establish exhaust emission standards for off-road motorcycles, which are currently uncontrolled, similar to those for on-road vehicles. Adoption of this issue is scheduled for June, 1996.

h. Consumer Products Control Measures. A large number of consumer products contain varying quantities of VOCs. The use of consumer products in and around the homes found in the SCAB contribute significant levels of VOC emissions. The California Clean Air Act (enacted in 1988) authorizes the ARB to adopt by January 1, 1992, statewide consumer products regulations to achieve the maximum feasible reduction of VOC emissions from this category. ARB has proposed to achieve, by the year 2000, a 50 percent statewide reduction from the estimated

230 tons per day of VOC emissions from consumer products statewide.

Section 41712 of the California Health and Safety Code defines a consumer product as a chemically formulated product used by household and institutional consumers, including, but not limited to: Detergents; cleaning compounds; polishes; floor finishes; cosmetics; personal care products; home, lawn, and garden products; disinfectants; sanitizers; and automotive specialty products. Because the consumer product category represents thousands of products, ARB grouped their proposed regulatory schedule into five areas: antiperspirants and deodorants (adopted November 1989); personal care products (by July 1990); household products (by January 1991); automobile/industrial products (by July 1991); and household pesticides (by July 1992). EPA will propose action on these regulations as they are submitted as a SIP revision.

(1) *Control of emissions from underarm products.* Emission Commitment (Tons of VOC/Day): The base-year (1985) and projected years (2000 and 2010) control category emission inventory totals are: 3.4, 4.3, and 5.9, respectively. Similarly, the projected year control measure emission reductions are: 3.7 and 5.0, respectively. Thus, the projected year control category emission balances are: 0.6 and 0.9, respectively.

Adoption commitment in the AQMP in 1992 by ARB; adoption completed in November 1989; regulations have not yet been submitted as a SIP revision.

(2) *Control of emissions from domestic products.* Emission Commitment (Tons of VOC/Day): The base-year (1985) and projected years (2000 and 2010) control category emission inventory totals are: 96.3, 120.3, and 131.0, respectively. Similarly, the projected year control measure emission reductions are: 64.8 and 74.6, respectively. Thus, the projected year control category emission balances are: 55.5 and 56.4, respectively. Adoption commitment in the AQMP 1992 by ARB.

4. *Proposed action on SCAQMD's control measures—a. Introduction to SCAQMD's responsibilities.* Under State law, the SCAQMD has very broad authorities and responsibilities for developing, adopting, and enforcing air pollution controls on stationary, area, indirect, and some mobile sources. The AQMP gives the SCAQMD responsibility for adopting and enforcing: (1) By the end of 1993, 67 Tier I regulations and, if and when necessary, contingency regulations to compensate for any shortfall in the SCAG measures that depend upon local

government action; (2) by the year 2000, Tier II regulations for solvents and coatings, and emission charges and regulations requiring more stringent technology for new and existing stationary sources; and (3) by the year 2007, Tier III regulations for non-reactive solvents.

b. *Tier I control measures.* The Tier I control measure commitments by the Governing Board of the SCAQMD should result in the adoption and implementation of controls on an expeditious schedule. The Tier I control levels reflect the expeditious development and adoption of regulations that go beyond the RACT level of control applicable in most other nonattainment areas of the country. Indeed, many of the Tier I control categories have not yet been regulated in any area. Nevertheless, the Tier I controls stop short of requiring application of technologies that have not yet been shown to be feasible either for the affected source category or for a similar source category.

EPA proposes to approve all of the SCAQMD commitments for the control measures discussed below, since they are specific, feasible, enforceable, within the expected resources and authorities of the SCAQMD, and are consistent with the Act's requirements for application of reasonably available control measures. While the commitments do specify the year of adoption for each of the SCAQMD measures, the implementation schedules for all of the SCAQMD Tier I rules are merely displayed graphically as extending from 1988 to 2000.

TIER I VOLATILE ORGANIC COMPOUND (VOC) CONTROL MEASURES:

(1) *Further Emission Reductions from Wood Flatstock Coating, A-1.* The rule will:

- Eliminate small source exemption of less than 3 gallons per day.
- Lower the VOC limit for coating used on printed interior wall panels.
- Replace conventional coating systems with ultraviolet cure systems.

Emission Content (Tons of VOC/Day): The base-year (1985) and projected years (2000 and 2010) control category emission inventory totals are: 0.9, 0.9, and 0.9, respectively. Similarly, the projected year control measure emission reductions are: 0.4 and 0.4, respectively. Thus, the projected year control category emission balances are: 0.5 and 0.5, respectively.

Adoption Commitment: 1993, by SCAQMD.

(2) *Miscellaneous Wood Products A-2.* The rule will require:

- Reformulation of coating products.
- More efficient application equipment.
- Add-on control device option.

Emission Content (Tons of OC/Day): The base-year (1985) and projected years (2000 and 2010) control category emission

inventory totals are: 21.2, 30.5, and 31.9, respectively. Similarly, the projected year control measure emission reductions are: 28.5 and 29.7, respectively. Thus, the projected year control category emission balances are: 2.0 and 2.2, respectively. However, emission reduction credits from transfer efficiency requirements are not creditable under existing EPA policy.

Adoption Commitment: Adopted August 5, 1988 as SCAQMD Rule 1136.

(3) *Further Emission Reductions from Can and Coil Coating, A-3.* The rule will:

- Lower solvent limits.
- Require operating and maintenance plans for control equipment.
- Require records be maintained and submitted.
- Establish limits on interior and exterior coatings on new and reconditioned drums, pails and lids.

Emission Content (Tons of VOC/Day): The base-year (1985) and projected years (2000 and 2010) control category emission inventory totals are: 8.4, 9.5, and 9.8, respectively. Similarly, the projected year control measure emission reductions are: 0.5 and 0.5, respectively. Thus, the projected year control category emission balances are: 9.0 and 9.3, respectively.

Adoption Commitment: Partially completed by adoption of November 3, 1989, SCAQMD Rule 1125. Remainder: 1989, SCAQMD.

(4) *Further Emission Reductions from Aerospace Assembly and Component Coating, A-4.* The rule will require:

- Transfer efficiency (65%)
- Reformation

Emission Content (Tons of VOC/Day): The base-year (1985) and projected years (2000 and 2010) control category emission inventory totals are: 7.3, 5.5, and 5.7, respectively. Similarly, the projected year control measure emission reductions are: 1.8 and 1.9, respectively. Thus, the projected year control category emission balances are: 3.7 and 3.8, respectively. However, emission reduction credits from transfer efficiency requirements are not creditable under existing EPA policy.

Adoption Commitment: Adopted in April, 1990.

(5) *Further Emission Reductions from Automobile Assembly Coating, A-5.* The rule will require:

- Higher transfer efficiency
- Add-on control devices
- Reformulation
- Time of day controls

Emission Content (Tons of VOC/Day): The base-year (1985) and projected years (2000 and 2010) control category emission inventory totals are: 5.9, 5.9, and 6.1, respectively. Similarly, the projected year control measure emission reductions are: 1.2 and 1.2, respectively. Thus, the projected year control category emission balances are: 4.7 and 4.9, respectively. However, emission reduction credits from transfer efficiency requirements are not creditable under existing EPA policy.

Adoption Commitment: 1989, by SCAQMD.

(6) *Substitute Solvents Used in Automobile Refinishing, A-6.* The rule will require:

- Alternate solvents and coatings
- Improved transfer efficiency
- Improved clean-up equipment
- Add-on controls

Emission Content (Tons of VOC/Day): The base-year (1985) and projected years (2000 and 2010) control category emission inventory totals are: 33.9, 43.3, and 48.6, respectively. Similarly, the projected year control measure emission reductions are: 37.8 and 42.3, respectively. Thus, the projected year control category emission balances are: 5.5 and 6.3, respectively. However, emission reduction credits from transfer efficiency requirements are not creditable under existing EPA policy.

Adoption Commitment: Adopted July 8, 1988, as SCAQMD Rule 1151.

(7) *Substitute Coatings Used in Marine Vessel Coating, A-7.* The rule will require:

- Reduced solvents in coatings

Emission Content (Tons of VOC/Day): The base-year (1985) and projected years (2000 and 2010) control category emission inventory totals are: 3.2, 3.3, and 3.5, respectively. Similarly, the projected year control measure emission reductions are: 1.0 and 1.0, respectively. Thus, the projected year control category emission balances are: 2.3 and 2.5, respectively.

Adoption Commitment: Adopted November 4, 1988, as SCAQMD rule 1106.

(8) *Further Control of Emissions from Architectural Coatings, A-8a.* The rule will:

- Delete exemptions
- Require the use of low VOC or waterborne coatings

Emission Content (Tons of VOC/Day): The base-year (1985) and projected years (2000 and 2010) control category emission inventory totals are: 63.8, 44.0, and 49.7, respectively. Similarly, the projected year control measure emission reductions are: 11.0 and 12.4, respectively. Thus, the projected year control category emission balances are: 33.0 and 37.3, respectively.

Adoption Commitment: Adopted February, 1990.

(9) *Further Emission Reductions from Paper, Fabric and Film Coating, A-9.* The rule will require:

- Low solvent coatings
- Recordkeeping

Emission Content (Tons of VOC/Day): The base-year (1985) and projected years (2000 and 2010) control category emission inventory totals are: 23.5, 24.4, and 25.5, respectively. Similarly, the projected year control measure emission reductions are: 0.2 and 0.3, respectively. Thus, the projected year control category emission balances are: 24.2 and 25.2, respectively.

Adoption Commitment: 1993, by SCAQMD.

(10) *Further Emission Reductions from Graphic Art Operations, A-10.* The rule will require:

- Daily compliance for small sources
- Recordkeeping for small sources

Emission Content (Tons of VOC/Day): The base-year (1985) and projected years (2000 and 2010) control category emission inventory totals are: 5.9, 4.8, and 5.0, respectively. The projected year control measure emission reductions are minor. Thus,

the projected year control category emission balances are not determined.

Adoption Commitment: 1989, by SCAQMD.

(11) *Substitute Solvents Used for Clean-up of Surface Coating, A-11.* The rule will require:

- Substitute solvents
- Improved clean-up procedures

Emission Content (Tons of VOC/Day): The base-year (1985) and projected years (2000 and 2010) control category emission inventory totals are: 13.0, 13.6, and 14.6, respectively. Similarly, the projected year control measure emission reductions are: 10.2 and 11.0, respectively. Thus, the projected year control category emission balances are: 3.4 and 3.6, respectively.

Adoption Commitment: 1989, by SCAQMD.

(12) *Further Emission Reductions from Metal Cleaning and Degreasing, A-12.* The rule will require:

- Add-on controls
- Posted operation requirements
- Increased freeboard ratio
- Eliminating exemptions
- Outreach program

Emission Content (Tons of VOC/Day): The base-year (1985) and projected years (2000 and 2010) control category emission inventory totals are: 23.3, 31.6, and 35.7, respectively. Similarly, the projected year control measure emission reductions are: 15.8 and 17.9, respectively. Thus, the projected year control category emission balances are: 15.8 and 17.8, respectively.

Adoption Commitment: 1989, by SCAQMD.

(13) *Control of Emissions from Rigid and Flexible Disc Manufacturing Operation, A-13.* The rule will require:

- Covers for coating-mixing vats
- Low VOC formulations

Emission Content (Tons of VOC/Day): The base-year (1985) and projected years (2000 and 2010) control category emission inventory totals are: 2.0, 2.8, and 3.0, respectively. Similarly, the projected year control measure emission reductions are: 2.4 and 2.5, respectively. Thus, the projected year control category emission balances are: 0.4 and 0.5, respectively.

Adoption Commitment: 1989, by SCAQMD.

(14) *Control of Emissions from Expanding Plastics and Blowing Foam Manufacturing Operation, A-14.* The rule will require:

- Add-on controls

Emission Content (Tons of VOC/Day): The base-year (1985) and projected years (2000 and 2010) control category emission inventory totals are: 3.0, 5.2, and 5.7, respectively. Similarly, the projected year control measure emission reductions are: 4.2 and 4.6, respectively. Thus, the projected year control category emission balances are: 1.0 and 1.1, respectively.

Adoption Commitment: 1989, by SCAQMD.

(15) *Control of Emissions from Semiconductor Manufacturing Operation, A-15.* The rule will require:

- Add-on controls
- Housekeeping requirements
- Conversion to positive photoresist

Emission Content (Tons of VOC/Day): The base-year (1985) and projected years (2000 and 2010) control category emission

inventory totals are: 1.4, 2.0, and 2.2, respectively. Similarly, the projected year control measure emission reductions are: 1.8 and 2.0, respectively. Thus, the projected year control category emission balances are: 0.2 and 0.2, respectively.

Adoption Commitment: Adopted July 8, 1988, as SCAQMD Rule 1164.

(16) *Further Emission Reductions from Perchloroethylene Dry Cleaning Operation, A-16.* Emission Commitment (Tons of VOC/Day): The base-year (1985) and projected years (2000 and 2010) control category emission inventory total are: 15.7, 21.6, and 24.5, respectively. Similarly, the projected year control measure emission reductions are: 5.4 and 6.1, respectively. Thus, the projected year control category emission balances are: 16.2 and 18.4, respectively. This rule will require:

- Operating requirements
- Eliminating exemptions

Adoption Commitment: 1991, by SCAQMD, contingent upon EPA determination regarding the photochemical reactivity and toxicity of perchloroethylene.

(17) *Further Emission Reductions from Petroleum Dry Cleaning Operation, A-17.* The rule will require:

- Operating requirements
- Eliminating exemptions

Emission Content (Tons of VOC/Day): The base-year (1985) and projected years (2000 and 2010) control category emission inventory totals are: 0.7, 1.1, and 1.2, respectively. Similarly, the projected year control measure emission reductions are: 0.9 and 1.0, respectively. Thus, the projected year control category emission balances are: 0.2 and 0.2, respectively.

Adoption Commitment: 1991, by SCAQMD.

(18) *Control of Emissions from Solvent Waste, A-20.* The rule will require:

- Prohibiting improper disposal of solvent wastes
- Waste minimization
- Outreach program

Emission Content (Tons of VOC/Day): The base-year (1985) and projected years (2000 and 2010) control category emission inventory totals have not been determined. Similarly, the projected year control measure emission reductions have not been determined. Thus, the projected year control category emission balances have not been determined.

Adoption Commitment: 1993, by SCAQMD.

(19) *Further Emission Reductions from Adhesives, A-21.* The rule will require:

- Low VOC formulations
- Higher transfer efficiency
- Closed systems for equipment cleaning operations

Emission Content (Tons of VOC/Day): The base-year (1985) and projected years (2000 and 2010) control category emission inventory totals are: 13.6, 14.6, and 15.3, respectively. Similarly, the projected year control measure emission reductions are: 7.3 and 7.6, respectively. Thus, the projected year control category emission balances are: 7.3 and 7.7, respectively. However, emission reduction credits from transfer efficiency

requirements are not creditable under existing EPA policy.

Adoption Commitment: 1989, by SCAQMD.

(20) *Petroleum and Gas Production—*

Control of Emissions from Gasoline Transfer: Fail Safe Phase-I Vapor Recovery Systems, B-1. The rule will require:

—Fail-safe Phase I vapor recovery systems

Emission Content (Tons of VOC/Day): The base-year (1985) and projected years (2000 and 2010) control category emission inventory totals are: 3.7, 4.0, and 4.1, respectively. The projected year control measure emission reductions are not determined. Thus the projected year control category emission balances are not determined.

Adoption Commitment: 1993, by SCAQMD.

(21) *Control of Emissions from Gasoline Transfer: Improved Installation and Repair of Phase-II Vapor Recovery Systems, A-2.* The rule will require:

—Licensing of emission control contractors

Emission Content (Tons of VOC/Day): The base-year (1985) and projected years (2000 and 2010) control category emission inventory totals are: 3.9, 4.2, and 4.3, respectively. Similarly, the projected year control measure emission reductions are: 0.4 and 0.4, respectively. Thus, the projected year control category emission balances are: 3.8 and 3.9, respectively.

Adoption Commitment: 1990, by SCAQMD.

(22) *Control of Emissions from Open Sumps, Pits, and Wastewater Separators, B-3.* The rule will require:

—Covers

—Replacement with enclosed tanks

Emission Content (Tons of VOC/Day): The base-year (1985) and projected years (2000 and 2010) control category emission inventory totals are: 2.3, 2.4, and 2.5, respectively. Similarly, the projected year control measure emission reductions are: 2.2 and 2.3, respectively. Thus, the projected year control category emission balances are: 0.2 and 0.2, respectively.

Adoption Commitment: 1991, by SCAQMD.

(23) *Control of Emissions from Pleasure Boat Fueling Operations, B-4.* The rule will require:

—Phase II vapor recovery equipment

Emission Content (Tons of VOC/Day): The base-year (1985) and projected years (2000 and 2010) control category emission inventory totals are: 0.5, 0.6, and 0.7, respectively. Similarly, the projected year control measure emission reductions are: 0.6 and 0.7, respectively. Thus, the projected year control category emission balances are: 0.0 and 0.0, respectively.

Adoption Commitment: 1992, by SCAQMD.

(24) *Control of Emissions from Cyclic Steam Production Wells, B-5.* The rule will require:

—Gas collection

—Flaring

Emission Content (Tons of VOC/Day): The base-year (1985) and projected years (2000 and 2010) control category emission inventory totals are: 0.1, 0.1, and 0.1, respectively. Similarly, the projected year control measure emission reductions are: 0.1 and 0.1, respectively. Thus, the projected year

control category emission balances are: 0.0 and 0.0, respectively.

Adoption Commitment: 1993, by SCAQMD.

(25) *Control of Emissions from Petroleum Refinery Flares [All Pollutants], B-12.* The rule will require:

—Step I—Monitoring of flare operations

—Evaluation and recommendation of control technologies

—Step II—Implementation of control technologies

Emission Content (Tons of VOC/Day): The base-year (1985) and projected years (2000 and 2010) control category emission inventory totals are: 0.5, 0.6, and 0.7, respectively. The projected year control measure emission reductions are not determined. Thus the projected year control category emission balances are not determined.

Adoption Commitment: 1993, by SCAQMD.

(26) *Further Emission Reductions from Valves, Pumps, Compressors, and Pressure Relief Devices Used in Oil and Gas Production Fields, Natural Gas Processing Plants, Refineries and Chemical Plants, B-13.* The rule will require:

—Inspection and maintenance program

Emission Content (Tons of VOC/Day): The base-year (1985) and projected years (2000 and 2010) control category emission inventory totals are: 15.5, 15.5 and 15.8, respectively. The projected year control measure emission reductions are: 11.6 and 11.9, respectively. Thus, the projected year control category emission balances are: 3.9 and 3.9, respectively.

Adoption Commitment: 1989, by SCAQMD.

(27) *Commercial and Industrial Processes—Control of Emissions from Large Commercial Bakeries, C-1.* The rule will require:

—Add-on controls

Emission Content (Tons of VOC/Day): The base-year (1985) and projected years (2000 and 2010) control category emission inventory totals are: 5.3, 5.4 and 5.4, respectively. The projected year control measure emission reductions are: 1.8 and 1.8, respectively. Thus, the projected year control category emission balances are: 3.6 and 3.6, respectively.

Adoption Commitment: 1993, by SCAQMD.

(28) *Control of Emissions from Non-Utility Internal Combustion Engines [All Pollutants], C-2.* The rule will require:

—Replacement with electric motors

Emission Content (Tons of VOC/Day): The base-year (1985) and projected years (2000 and 2010) control category emission inventory totals are: 7.8, 8.5 and 8.8, respectively. The projected year control measure emission reductions are: 8.5 and 8.8, respectively. Thus, the projected year control category emission balances are: 0.0 and 0.0, respectively.

Adoption Commitment: 1990, by SCAQMD.

(29) *Control of Emissions from Commercial Charbroiling [VOC and PM], C-3.* The rule will require:

—Exhaust control technology

—Grill design changes

Emission Content (Tons of VOC/Day): The base-year (1985) and projected years (2000

and 2010) control category emission inventory totals are: 1.9, 2.5 and 2.8, respectively. The projected year control measure emission reductions are: 2.3 and 2.5, respectively. Thus, the projected year control category emission balances are: 0.2 and 0.3, respectively.

Adoption Commitment: 1991, by SCAQMD.

(30) *Further Emission Reductions from Rubber Products Manufacturing [VOC and PM], C-4.* The rule will require:

—Collection system with electrostatic precipitator connected to a ductwork system before a carbon absorber—

Emission Content (Tons of VOC/Day): The base-year (1985) and projected years (2000 and 2010) control category emission inventory totals are: 11.2, 14.7 and 15.6, respectively. The projected year control measure emission reductions are: 11.0 and 11.7, respectively. Thus, the projected year control category emission balances are: 3.7 and 3.9, respectively.

Adoption Commitment: 1991, by SCAQMD.

(31) *Residential and Public Sectors—"Control of Emissions from Starter Fluid, D-1.* The rule will require:

—Use of alternative barbecues

—Reformulation

—Restrict usage on summer smog episode days

Emission Content (Tons of VOC/Day): The base-year (1985) and projected years (2000 and 2010) control category emission inventory totals are: 2.0, 2.5 and 2.8, respectively. The projected year control measure emission reductions are: 1.3 and 1.4, respectively. Thus, the projected year control category emission balances are: 1.2 and 1.4, respectively.

Adoption Commitment: 1992, by SCAQMD.

(32) *Control of Fugitive Emissions from Publicly Owned Treatment Works, D-3.* The rule will require:

—More stringent limits for industrial effluent discharged to sewage treatment plants

—Add-on controls at the sewage treatment plant

Emission Content (Tons of VOC/Day): The base-year (1985) and projected years (2000 and 2010) control category emission inventory totals are: 0.2, 0.3 and 0.3, respectively. The projected year control measure emission reductions are: 0.1 and 0.1, respectively. Thus, the projected year control category emission balances are: 0.2 and 0.2, respectively.

Adoption Commitment: 1992, by SCAQMD.

(33) *Control of Emissions from Livestock Waste [VOC, PM], E-2.* The rule will require:

—Requiring alternative uses

—Requiring alternative disposal methods

—Addition of water to compost piles

—Better housekeeping procedures

Emission Content (Tons of VOC/Day): The base-year (1985) and projected years (2000 and 2010) control category emission inventory totals are: 37.9, 39.4 and 40.6, respectively. The projected year control measure emission reductions are: 9.8 and 10.1, respectively. Thus, the projected year control category emission balances are: 29.6 and 30.5, respectively.

Adoption Commitment: 1993, by SCAQMD.

(34) *Installation of Best Available Retrofit Control Technology [All Pollutants], F-1.* The rule will require:

- Best available retrofit control technology on existing permitted sources

Emission Content (Tons of VOC/Day): The base-year (1985) and projected years (2000 and 2010) control category emission inventory totals are: 174.2, 182.8 and 192.8, respectively. The projected year control measure emission reductions are: 44.1 and 46.6 respectively. Thus, the projected year control category emission balances are: 138.7 and 146.2, respectively.

Adoption Commitment: 1992, by SCAQMD.

(35) *Control of Emissions from Exempt Equipment [All Pollutants], F-6.* The rule will require:

- Elimination of exemptions

Emission Content (Tons of VOC/Day): The base-year (1985) and projected years (2000 and 2010) control category emission inventory totals, control measure emission reductions, and control category emission balances have not been determined.

Adoption Commitment: 1992, by SCAQMD.

(36) *Control of Emissions from Soil Decontamination, F-7.* The rule will require:

- On-site collection of VOC
- Excavation and removal/On-site treatment
- Install biological degradation system
- Approved equivalent methods

Emission Content (Tons of VOC/Day): The base-year (1985) and projected years (2000 and 2010) control category emission inventory totals have not been determined. The projected year control measure emission reductions are shown to be: 10.0 and 10.0 respectively. However, the projected year control category emission balances also have not been determined.

Adoption Commitment: Adopted August 5, 1988, as SCAQMD Rule.

(37) *New Source Review [All Pollutants], F-8.* The rule will:

- Set limits on emission increases from all new and modified permitted sources

Emission Content (Tons of VOC/Day): The base-year (1985) and projected years (2000 and 2010) control category emission inventory totals are: 221.0, 259.0 and 274.0, respectively. The projected year control measure emission reductions are: 21.0 and 44.0 respectively (see "Emission Reduction" in South Coast AQMP). Thus, the projected year control category emission balances are: 238.0 and 230.0, respectively.

Adoption Commitment: 1989, by SCAQMD.

(38) *Phase-Out Stationary Source Fuel Oil and Solid Fossil Fuel Use, F-10.* The rule will:

- Phase-out of use of fuel oil and solid fossil fuels

Emission Content (Tons of VOC/Day): The base-year (1985) and projected years (2000 and 2010) control category emission inventory totals, control measure emission reductions, and control category emission balances have not been determined.

Adoption Commitment: 1990, by SCAQMD.

(39) *Emission Minimization Management Plan [All Pollutants], F-11.* The rule will require:

- Emission minimization management plan

Emission Content (Tons of VOC/Day): The base-year (1985) and projected years (2000 and 2010) control category emission inventory totals, control measure emission reductions, and control category emission balances have not been determined.

Adoption Commitment: 1990, by SCAQMD.

TIER I OXIDES OF NITROGEN (NO_x) CONTROL MEASURES

(40) *Petroleum and Gas Production—Control of Emissions from Crude Oil Pipeline Heaters, B-6.* The rule will require:

- Oxygen trim
- Flue gas recirculation
- Low NO_x burners
- Selective catalytic reduction
- Selective non-catalytic reduction
- Alternative fuels

Emission Content (Tons of oxides of nitrogen/Day): The base-year (1985) and projected years (2000 and 2010) control category emission inventory totals are: 0.02, 0.02 and 0.02, respectively. The projected year control measure emission reductions are: 0.01 and 0.01, respectively. Thus, the projected year control category emission balances are: 0.01 and 0.01, respectively.

Adoption Commitment: 1983, by SCAQMD.

(41) *Control of Emissions from Petroleum Refinery Flares [All Pollutants], B-12.* The rule will require:

- Step I—Monitoring of flare operations
- Evaluation and recommendation of control technologies
- Step II—Implementation of control technologies

Emission Content (Tons of oxides of nitrogen/Day): The base-year (1985) and projected years (2000 and 2010) control category emission inventory totals are: 0.06, 0.07, and 0.08, respectively. The control measure emission reductions and control category emission balances have not been determined.

Adoption Commitment: 1993, by SCAQMD.

(42) *Control of Emission from Oil Field Steam Generators, B-14.* The rule will require:

- Oxygen trim
- Flue gas recirculation
- Low NO_x burners
- Selective catalytic reduction
- Selective non-catalytic reduction
- Alternative fuels

Emission Content (Tons of oxides of nitrogen/Day): The base-year (1985) and projected years (2000 and 2010) control category emission inventory totals are: 0.6, 0.6 and 0.6, respectively. The projected year control measure emission reductions are: 0.04 and 0.04, respectively. Thus, the projected year control category emission balances are: 0.2 and 0.2, respectively.

Adoption Commitment: 1990, by SCAQMD.

(43) *Control of Emissions from Petroleum Refinery Heaters and Boilers, B-15.* The rule will require:

- Flue gas treatment
- Combustion modification
- Alternative fuels

Emission Content (Tons of oxides of nitrogen/Day): The base-year (1985) and projected years (2000 and 2010) control category emission inventory totals are: 49.2,

31.7 and 31.9, respectively. The projected year control measure emission reductions are: 25.4 and 25.5, respectively. Thus, the projected year control category emission balances are: 6.3 and 3.4, respectively.

Adoption Commitment: Adopted August 5, 1988, as SCAQMD Rule 1109.

(44) *Commercial and Industrial Processes—Control of Emissions from Non-Utility Internal Combustion Engines [All Pollutants], C-2.* The rule will require:

- Replacement with electric motors

Emission Content (Tons of oxides of nitrogen/Day): The base-year (1985) and projected years (2000 and 2010) control category emission inventory totals are: 81.6, 29.2 and 30.3, respectively. The projected year control measure emission reductions are: 29.2 and 30.3, respectively. Thus, the projected year control category emission balances are: 0.0 and 0.0, respectively.

Adoption Commitment: 1990, by SCAQMD.

(45) *Control of Emissions from Afterburners, C-5.* The rule will require:

- Post combustion treatment
- Alternative fuels
- Other equivalent control technologies

Emission Content (Tons of oxides of nitrogen/Day): The base-year (1985) and projected years (2000 and 2010) control category emission inventory totals are: 3.0, 3.3 and 3.5, respectively. The projected year control measure emission reductions are: 2.3 and 2.5, respectively. Thus, the projected year control category emission balances are: 1.0 and 1.0, respectively.

Adoption Commitment: 1993, by SCAQMD.

(46) *Control of Emissions from Small Boilers and Process Heaters, C-7.* The rule will require:

- Use of radiant burner
- Alternative fuels
- Other comparable control technologies

Emission Content (Tons of oxides of nitrogen/Day): The base-year (1985) and projected years (2000 and 2010) control category emission inventory totals are: 2.8, 3.2 and 3.4, respectively. The projected year control measure emission reductions are: 2.4 and 2.6, respectively. Thus, the projected year control category emission balances are: 0.8 and 0.8, respectively.

Adoption Commitment: 1992, by SCAQMD.

(47) *Control of Emissions from Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters, C-8.* The rule will require:

- Combustion modification
- Flue gas treatment
- Alternative fuels

Emission Content (Tons of oxides of nitrogen/Day): The base-year (1985) and projected years (2000 and 2010) control category emission inventory totals are: 19.7, 22.3 and 23.8, respectively. The projected year control measure emission reductions are: 15.7 and 16.7, respectively. Thus, the projected year control category emission balances are: 6.6 and 7.1, respectively.

Adoption Commitment: Adopted September 9, 1988, as SCAQMD Rule 1146.

(48) *Control of Emissions from Stationary Gas Turbines, C-9.* The rule will require:

- Combustion modification (steam injection)
- Flue gas treatment system (selective catalytic reduction)
- Alternative fuels

Emission Content (Tons of oxides of nitrogen/Day): The base-year (1985) and projected years (2000 and 2010) control category emission inventory totals are: 17.5, 37.7 and 37.7, respectively. The projected year control measure emission reductions are: 22.6 and 22.6, respectively. Thus, the projected year control category emission balances are: 15.1 and 15.1, respectively.

Adoption Commitment: 1989, adopted by SCAQMD as Rule 1134.

(49) *Control of Emissions from Electric Power Generating Boilers, C-10.* The rule will require:

- Combustion modification
- Flue gas treatment system (selective catalytic reduction)
- Alternative fuels

Emission Content (Tons of oxides of nitrogen/Day): The base-year (1985) and projected years (2000 and 2010) control category emission inventory totals are: 41.8, 39.2 and 41.8, respectively. The projected year control measure emission reductions are: 27.4 and 29.2, respectively. Thus, the projected year control category emission balances are: 11.8 and 12.6, respectively.

Adoption Commitment: Adopted by SCAQMD as Rule 1135.

(50) *Residential and Public Sectors—Out of Basin Transport of Biodegradable Solid Waste [All Pollutants], D-2.* The measure will require:

- All Biodegradable solid waste to be transported out of the air basin for disposal

Emission Content (Tons of NO_x /Day): The base-year (1985) and projected years (2000 and 2010) control category emission inventory totals, control measure emission reductions, and control category emission balances have not been determined.

Adoption Commitment: by the ARB and the SCAQMD; for 1992, by Local Governments.

(51) *Control of Emissions from Swimming Pool Water Heating, B-4.* The rule will require:

- Installation of flat plate solar collectors

Emission Content (Tons of oxides of nitrogen/Day): The base-year (1985) and projected years (2000 and 2010) control category emission inventory totals, control measure emission reductions, and control category emission balances have not been determined.

Adoption Commitment: by the ARB and the SCAQMD; for 1990, by Local Governments.

(52) *Control of Emissions from Residential and Commercial Water Heating, D-5.* The rule will require:

- Installation of solar equipment

Emission Content (Tons of oxides of nitrogen/Day): The base-year (1985) and projected years (2000 and 2010) control category emission inventory totals are: 13.3, 10.7, and 12.3, respectively. The control measure emission reductions and control category emission balances have not been determined.

Adoption Commitment: by the ARB and the SCAQMD; for 1990, by Local Governments.

(53) *Others—Installation of Best Available Retrofit Control Technology [All Pollutants], F-1.* The rule will require:

- Best available retrofit control technology on existing permitted sources

Emission Content (Tons of oxides of nitrogen/Day): The base-year (1985) and projected years (2000 and 2010) control category emission inventory totals are: 18.9, 20.5 and 23.1, respectively. The projected year control measure emission reductions are: 3.8 and 4.1, respectively. Thus the projected year control category emission balances are: 16.7 and 19.0, respectively.

Adoption Commitment: 1992, by SCAQMD.

(54) *Control of Emissions from Exempt Equipment [All Pollutants], F-6.* The rule will require:

- Elimination of exemptions

Emission Content (Tons of oxides of nitrogen/Day): The base-year (1985) and projected years (2000 and 2010) control category emission inventory totals, control measure emission reductions, and control category emission balances have not been determined.

Adoption Commitment: Adopted on June 3, 1988, SCAQMD Rule 219.

(55) *New Source Review [All Pollutants], F-8.* The rule will:

- Set limits on emission increases from all new and modified permitted sources

Emission Content (Tons of oxides of nitrogen/Day): The base-year (1985) and projected years (2000 and 2010) control category emission inventory totals are: 159.0, 122.0 and 130.0, respectively. The projected year control measure emission reductions are: 15.0 and 33.0, respectively (see "Emission Reduction" in South Coast AQMP). The projected year control category emission balances are: 107.0 and 97.0, respectively.

Adoption Commitment: 1989, by SCAQMD.

(56) *Phase-Out Stationary Source Fuel Oil and Solid Fossil Fuel Use, F-10.* The rule will:

- Phase-out of use of fuel oil and solid fossil fuels

Emission Content (Tons of oxides of nitrogen/Day): The base-year (1985) and projected years (2000 and 2010) control category emission inventory totals are: 22.0, 27.6 and 30.2, respectively. The projected year control measure emission reductions are: 16.6 and 18.1, respectively. The projected year control category emission balances are: 11.0 and 12.1, respectively.

Adoption Commitment: 1990, by SCAQMD.

(57) *Emission Minimization Management Plan [All Pollutants], F-11.* The rule will require an:

- Emission minimization management plan

Emission Content (Tons of oxides of nitrogen/Day): The base-year (1985) and projected years (2000 and 2010) control category emission inventory totals, control measure emission reductions, and control category emission balances have not been determined.

Adoption Commitment: 1990, by SCAQMD.

TIER I CARBON MONOXIDE (CO) CONTROL MEASURES

(58) *Control of Emissions from Petroleum Refinery Flares [All Pollutants], B-12.* The rule will require:

- Step I—Monitoring of flare operations
- Evaluation and recommendation of control technologies

- Step II—Implementation of control technologies

Emission Content (Tons of carbon monoxide/Day): The base-year (1985) and projected years (2000 and 2010) control category emission inventory totals are: 0.34, 0.42, and 0.46, respectively. The projected year control measure emission reductions and the projected year control category emission balances have not been determined.

Adoption Commitment: 1993, by SCAQMD.

(59) *Commercial and Industrial Processes—Control of Emissions from Non-Utility Internal Combustion Engines [All Pollutants].* The rule will require:

- Replacement with electric motors

Emission Content (Tons of carbon monoxide/Day): The base-year (1985) and projected years (2000 and 2010) control category emission inventory totals are: 36.1, 40.9 and 43.3, respectively. The projected year control measure emission reductions are: 40.9 and 43.3, respectively. The projected year control category emission balances are: 0.0 and 0.0, respectively.

Adoption Commitment: 1990, by SCAQMD.

(60) *Installation of Best Available Retrofit Control Technology [All Pollutants], F-1.* The rule will require:

- Best available retrofit control technology on existing permitted sources

Emission Content (Tons of carbon monoxides/Day): The base-year (1985) and projected years (2000 and 2010) control category emission inventory totals are: 38.5, 46.7 and 52.7, respectively. The projected year control measure emission reductions are: 8.7 and 9.8, respectively. The projected year control category emission balances are: 38.0 and 42.9, respectively.

Adoption Commitment: 1991, by SCAQMD.

(61) *Control of Emissions from Exempt Equipment [All Pollutants], F-6.* The rule will require:

- Elimination of exemptions

Emission Content (Tons CO/Day): The base-year (1985) and projected years (2000 and 2010) control category emission inventory totals, control measure emission reductions, and control category emission balances have not been determined.

Adoption Commitment: Adopted on June 3, 1988, as SCAQMD Rule 219.

(62) *New Source Review [All Pollutants], F-8.* The rule will:

- Set limits on emission increases from all new and modified permitted sources

Emission Content (Tons of carbon monoxide/Day): The base-year (1985) and the projected years (2000 and 2010) control category emission inventory totals are: 58.0, 76.0 and 82.0, respectively. The projected year control measure emission reductions are: 10.0 and 21.0, respectively (see "Emission Reduction" in South Coast AQMP). The projected year control category emission balances are: 66.0 and 61.0.

Adoption Commitment: 1989, by SCAQMD.

(63) *Emission Minimization Management Plan [All Pollutants], F-11.* The rule will require a:

—Emission minimization management plan

Emission Content (Tons of carbon monoxide/Day): The base-year (1985) and projected years (2000 and 2010) control category emission inventory totals, control measure emission reductions, and control category emission balances have not been determined.

Adoption Commitment: 1990, by SCAQMD.

c. *Control measures that depend upon technology development.* In order to complete rule development for certain of the Tier I control measures and to achieve the Tier II and Tier III control measure and emission reduction goals, the AQMP also assigns to the SCAQMD, with the assistance of the ARB and CEC, the responsibility for the following technology advancement projects, to be implemented on the schedule shown:

Project	Dates
Reformulation of Solvents and Coatings.....	1988-1996
Alternative Solvent Application Methods (e.g., Robotics, UV).....	1988-1998
Export Fees.....	1988-1992
Emissions from Refinery Flares.....	1988-1989
Industrial Electrification Projects.....	1988-1998
Electric Vehicles (Battery/Fuel Cell) (with CEC, ARB).....	1988-1998
Clean Fuel Heavy Duty Vehicles (with ARB).....	1988-1998
Electrical Energy Supply and Distribution (with CEC).....	1989-1998
Methanol in Refinery Heaters.....	1989-1990
Fuel Cells (> 100 MW).....	1989-1993
Electric Vehicle Battery (with CEC).....	1989-1995
Phase I Vapor Recovery Systems (with ARB).....	1990-1992
Economic and Environmental Impacts of Source Substitution.....	1990-1992
Railroad Electrification Feasibility Study (with SCAG).....	1991-1992

To coordinate this research, the Governing Board of the SCAQMD has established a Technology Advancement Office. Additional staff and funding for the technology development projects have been provided by the ARB and the CEC.

The Tier I control measures discussed in this section and the Tier II and Tier III control measures discussed in sections V.D.6 and V.D.7 below are not yet fully developed for reasons specified in the analysis of each measure. EPA recognizes, however, that these control measures require a complex, ambitious, and necessarily extended rule development process such as the program set forth in the AQMP. EPA proposes therefore to approve the SCAQMD's commitments to pursue the control measures. EPA's approval of the commitments does not bind the SCAQMD unalterably to the adoption of

the particular control measures or approaches discussed in the AQMP, inasmuch as EPA policy allows substitution of comparable controls that may prove to be more feasible upon further investigation. However, failure by the SCAQMD to carry out the federally approved control measure development process exposes the area to potential SIP nonimplementation findings under sections 173(4) and 176(b) unless the SIP is amended to provide equivalent reductions from different strategies over the same time periods.

d. *Control measures that depend upon additional legislative authorities granted to the district—(1) Emission charges on architectural coatings, A-8a.* This measure proposes to increase emission reductions from SCAQMD Rule 1113 (see discussion above of SCAQMD Measure A-8a, Further Control of Emissions from Architectural Coatings). Further reductions would be achieved by imposing emission charges on coatings which have higher than a specified goal: 120 grams of VOC per liter as the short-run goal and zero VOCs as the long-run goal. Charges on a per emission unit basis would be indexed to the additional costs of complying with the goal standard, and coating manufacturers whose products do not comply with the goal would have to assess emission charges to these products in order to market them in the South Coast. The fees collected would be used to finance research and development in reducing the VOC content of the coatings. EPA proposes to approve the SCAQMD's commitment to seek legislative authority to impose these emission charges.

Emission Commitment (Tons of VOC/Day): The base-year (1985) and projected years (2000 and 2010) control category emission inventory totals are: 63.8, 44.0, and 49.7, respectively. The projected year control measure emission reductions are not determined. Thus, the projected year control category emission balances are also not determined. Adoption commitment in 1990, by SCAQMD.

(2) *Urban bus system electrification, G-1.* This measure would convert major fixed route bus service from diesel operation to electric operation by means of overhead trolley wires. Other routes would be converted to clean fuels (see measure G-2, below). The AQMP notes that "new innovations in capitalization" may be required by the high capital cost for installation of the power distribution system. EPA proposes to approve the

SCAQMD's commitment to adopt in 1990 rule imposing this requirement.

EMISSION COMMITMENT

(Tons/Day)

	1985	2000	2010
VOC Inventory.....	1.5	2.3	3.0
Reduction.....		0.7	1.0
Remaining.....		1.6	2.0
No _x Inventory.....	9.3	14.0	18.7
Reduction.....		4.7	6.2
Remaining.....		9.3	12.5
CO Inventory.....	4.7	7.1	9.5
Reduction.....		2.4	3.1
Remaining.....		4.7	6.4

(3) *Clean fuel retrofit of transit buses, G-2.* In this measure, the SCAQMD committed to use its authority under State law to adopt in 1989 a rule mandating conversion of all or part of the existing transit bus fleet to alternate clean fuels technology. Alternate clean fuels are indicated as including methanol, compressed natural gas, propane, liquefied natural gas, or some other clean fuel product. EPA approves the SCAQMD commitment to adopt a rule to achieve the below-listed emission reductions.

EMISSION COMMITMENT

(Tons/Day)

	1985	1990	2000
VOC Inventory.....	1.5	1.7	2.2
Reduction.....		0.1	0.0
Remaining.....		1.8	2.2
No _x Inventory.....	8.5	9.9	12.7
Reduction.....		4.9	0.0
Remaining.....		5.0	12.7

e. *Other Tier I control measures—(1) Clean fuels in new fleet vehicles, G-4.* To implement this measure, the SCAQMD has prepared draft Rule 1601, requiring fleet vehicle operators to purchase vehicles capable of operating on alternative fuels, resulting in progressively cleaner emissions. The AQMP scheduled rule adoption in 1989 but did not determine associated emission reductions. EPA proposes to approve the SCAQMD commitment.

(2) *Banning of new drive-through facilities, H-1.* EPA proposes to approve the SCAQMD commitment to adopt a rule by 1993 that would place restrictions on design, location, or construction of drive-through facilities to minimize time idling, or would ban such facilities. The AQMP does not calculate CO emission reductions for the measure.

5. Proposed Action on SCAG's Transportation, Land Use and Energy Conservation Control Measures

Appendix IV-G of the AQMP includes 29 Transportation, Land Use and Energy Conservation control measures. The measures were developed by the Southern California Association of Governments (SCAG), the designated Metropolitan Planning Organization for the multi-county area that includes the entire SCAB.

a. *Introduction to SCAG's responsibilities and authorities.* The control measures included in appendix IV-G and listed below were adopted on March 17, 1989, by the Executive Committee of the SCAG (Resolution #89-272-6). SCAG is the area wide planning agency and designated Metropolitan Planning Organization for the multi-county area which includes the entire SCAB. Under State law, SCAG has the responsibility and authority to prepare and adopt the transportation, land use, and energy conservation control measures. In general, however, authority for actual implementation of the SCAG control measures resides with more than 100 local governments in the SCAB, as well as the SCAQMD and local, regional, and State transportation agencies. The SCAQMD also adopted the appendix IV-G measures as part of the AQMP on March 17, 1989 (SCAQMD Resolution #89-13).

SCAG's resolution of adoption "commits [the Executive Committee of the SCAG] to working with our member jurisdictions and the public in the effective implementation of the plan so that affected agencies will have the flexibility to design details of their implementation program that will be consistent with the defined emission reduction targets in the Plan" (SCAG Resolution #89-272-6). Before finally adopting the South Coast plan, the Board of the ARB requested that SCAG "elaborate on its process to obtain the support and commitment of local governments to implement the land use and transportation measures for which they are responsible" (ARB Resolution #89-66). In response, SCAG prepared a report, "SCAG Response to California Air Resources Board" (August 15, 1989), which is included in the TSD for this notice. SCAG has also developed guidelines for local governments for implementing the AQMP through general plans. This guidance is an attachment to the TSD.

Two portions of the locally adopted plan do not have emission reductions associated with them, but provide helpful information regarding the policies and other assumptions

underlying many of the transportation and land use control measures as well as the Conformity Procedures. The Regional Mobility Plan (1989 AQMP, appendix IV-H) and the 1988 Regional Growth Management Plan (1989 AQMP, appendix IV-I) are reviewed by EPA on this basis—as providing essential information and the framework for the plan's overall proposed transportation and land use program and specific measures.

b. *SCAG's control measures.* The transportation, land use, and energy conservation control measures included in appendix IV-G present a very ambitious agenda aimed at reducing emissions from a broad range of mobile sources—private automobiles, commercial trucks, trains, and airplanes—in addition to power generation, waste disposal, and materials manufacturing. Many of the measures, and particularly those with the most significant potential for emission reductions, are designed to affect the use and operation of mobile sources, including employer rideshare and transit incentives, telecommunications, and alternative work weeks. Given the nature of many of these measures, implementation is often more difficult than with more traditional control measures.

However, with the projected growth in Basin population and the significant portion of emissions from mobile sources, such transportation control measures are critical to achieving and maintaining NAAQS for ozone and CO. Without measures to significantly reduce vehicle trips and vehicle miles traveled (VMT), the progress achieved through the California Motor Vehicle Program and other controls would be negated. FIP backstop measures might also be imposed, in addition to appropriate sanctions identified in sections 176(a), 176(b) and 316. Given the significance of the problem, it is absolutely necessary that local governments and State and regional agencies adopt and implement all of the SIP's measures in a timely manner.

c. *Criteria for proposed action—(1) Clean Air Act.* Criteria for nonattainment plans are included in section 172(b) of the CAA. In addition to requirements discussed earlier in this notice not applicable to the SCAG-developed measures, section 172(b) requires that the plan provisions must: (a) Provide for the implementation of all reasonably available control measures as expeditiously as practicable (176(b)(2)); (b) identify and commit the financial and manpower resources necessary to carry out the plan

(176(b)(7)); and (c) include written evidence that the State, the local government(s), or a regional agency designated by local governments have adopted by statute, regulation, ordinance, or other legally enforceable document, the necessary requirements and schedules and timetables for compliance, and are committed to implement and enforce the appropriate elements of the plan (176(b)(10)).

(2) *1982 SIP guidance.* Additional EPA criteria for approving transportation measures into a SIP are described in the 1982 SIP Guidance (46 FR 7183, 7187-88, and 7191, January 22, 1981). ("Transportation measures" would include the land use measure, which is designed to reduce emissions from transportation sources.) The 1982 SIP Guidance stated that the portion of the SIP addressing emission reductions from transportation measures must include eight basic provisions:

- (a) An emission reduction target for the transportation sector;
- (b) All reasonably available transportation measures necessary for the expeditious attainment of the target;
- (c) Commitments, schedules of key milestones, and, where appropriate, evidence of legal authority for implementation, operation, and enforcement of adopted reasonably available transportation measures;
- (d) Comprehensive public transportation measures to meet basic transportation needs, including commitments and schedules for implementation;
- (e) A description of public participation and elected official consultation activities;
- (f) A monitoring plan;
- (g) Administrative and technical procedures and agency responsibilities for ensuring that transportation plans, programs, and projects approved by the metropolitan planning organization are in conformance with the SIP;
- (h) A two-part contingency provision including (1) A list of transportation measures and projects that may adversely affect air quality and that will be delayed while the SIP is being revised if expected emission reductions or air quality improvements do not occur; and

(2) A description of the process that will be used to determine and implement additional transportation measures beneficial to air quality that will compensate for the unanticipated emission reduction shortfalls.

As identified in section V.D.1. of this notice, the measures must also be completely described and shown to be capable of achieving the specified

emission reductions. The description should clearly identify the "tasks and responsibilities of state and local agencies and elected officials in carrying out required programming, implementation, operation, and enforcement activities" (46 FR 7187). The description should also include schedules of key milestones and "costs and funding sources for planning, implementing, operating, and enforcing [the] adopted measures" (ibid).

Of particular importance in reviewing the SCAG transportation measures is the third provision requiring commitments, schedules, and evidence of legal authority for implementation. Appendix C of the 1982 SIP Guidance discussed the commitment criteria in depth. In order for EPA to give emission reduction credit toward the SIP attainment demonstration and progress requirements, the measure must meet the commitment criterion.

Implementation comments were defined in appendix C as follows:

Certification by federal, state, and local agencies with the authority to implement SIP measures that (1) Funds to implement the measure are obligated and (2) all necessary approvals have been obtained. The certification of committed funds may be by reference to budgets or other legally adopted documents.

Identification by the implementing agency of the scheduled dates for start of construction (if appropriate) and for start of operation.

If a project is progressing toward implementation, but has not reached the stage of receiving budget approval, then the implementation commitment should be in the form of a schedule that lists the projected dates for major steps to advance the measure through the remaining planning and programming processes.

The Guidance further states that the lead planning agency (in this case SCAG) is usually charged with obtaining the commitments. This requires: (1) Identifying all remaining actions and agency or official responsible for each action; and (2) Consulting with each agency or official to establish the date by which the action will be taken. The product of these efforts should be submitted in the SIP. An example of such a detailed schedule appears in appendix C. Additionally, appendix C, in describing the term "Reasonably Available Transportation Measure", states that "these measures need to be adopted by the affected state and local officials participating in the planning and programming processes" (46 FR 7191).

(3) *Outline for proposed action.* Discussion of whether the AQMP meets provisions (a), (b) [also CAA 176(b)(2)], (c) [also CAA 176(b)(10)], (d), and (f)

appear below for the entire group of transportation measures. The individual measures are also briefly described and discussed in relation to the criteria. The public participation provision (e) is discussed in section V.N. of this notice. The conformity provision (g) is discussed in section V.D.8. of this notice, and the contingency provision (h) is discussed in sections V.D.9. and V.J.

d. *Proposed Action*—(1) *Emission reduction target for the transportation sector.* The emission reduction target for the transportation sector is shown for Tiers I, II, and III in AQMP Tables 4-1, 4-12, and 4-14.

(2) *All reasonably available transportation measures (section 108(f) list).* Section 108(f) of the CAA includes 18 measures to reduce mobile source related pollutants that the 1982 SIP Guidance identified as reasonably available measures. The Guidance stated that the SIP submittal should present documentation, based on technical analysis, of the basis for not implementing any of the measures identified in section 108(f).

EPA concludes that the measures in the AQMP that are adopted by SCAG, SCAQMD and ARB generally represent all available transportation control measures and address the section 108(f) measures. In addition, the RMP includes additional measures promoting non-motorized transportation (bicycling and walking). The only exception is 108(f) measure xviii, "programs to reduce motor vehicle emissions which are caused by extreme cold start conditions." This measure is not applicable to the South Coast Basin, where extreme cold start conditions do not exist.

(3) *Commitments and legal authority.* Approval of the SIP's transportation, land use and energy conservation measures is complicated by two factors: (1) All but one of the measures (Measure 10) requires implementation (in full or part) by an entity other than SCAG, SCAQMD, or ARB (the agencies that have adopted the AQMP); (2) most measures must be implemented by more than one governmental entity or group of governments (e.g. local governments). EPA can only allow emission reduction credits ("full approval") for measures that meet the commitment criteria for all parties involved.

The State has submitted commitments from SCAG, SCAQMD and ARB, but not from local governments, transportation agencies, or other responsible agencies. Therefore, for measures that require other agency action, full approval and emission reduction credit cannot be awarded until the commitments are submitted. In the case of Measure 10,

SCAQMD has committed to adopting a rule by a specified date; it has not yet adopted the rule in legally enforceable form.

As the agency responsible for developing the Transportation, Land Use and Energy Conservation measures, SCAG has committed to carrying out the process leading to adoption of the measures and has described this process and schedule. Evidence of this is included in the 1989 report to ARB, a March 1990 report to ARB ("Local Government Implementation of Regional Plans: SCAG's Semi-Annual Report to the ARB), the Memorandum of Understanding between SCAQMD and SCAG, efforts of the SCAG Monitoring Subgroup, and the SCAG 1990-1991 Overall Work Program.

Because of the lack of legally binding commitments to the measures from all necessary entities, EPA proposes to only approve the commitments from SCAG, SCAQMD, and ARB to implement those portions of the measures for which the agencies are responsible (except Measure 13). EPA also proposes to approve the commitments of the three agencies to attain commitments from the necessary local governments, transportation agencies, and other entities (except Measure 13). At such time, emission reduction credits could be approved if the measures meet the other CAA and SIP criteria.

(4) *Comprehensive public transportation measures.* Measure 2-g. (Transit Improvements) identifies several new rail lines, as well as increased express bus service. In addition, Measures 2-a. (Employer Rideshare and Transit Incentives), 2-d. (Merchant Transportation Incentives), 2-e. (Auto Use Restrictions), 2-f. (HOV Lanes), and 8 (Airport Ground Access) all aim to improve transit service and/or ridership. Furthermore, the Regional Mobility Plan, while not a SIP measure, calls for improved transit planning, coordination, and service. SCAG estimates that through these measures, transit mode split will increase from 5.1% to 19.3% for commute trips, and overall transit mode split will increase from 2% to 6%. As required in the 1982 SIP Guidance, SCAG has committed to pursuing federal, state, and local funds necessary to implement these measures. SCAG is also pursuing new public funding sources and private financing. EPA concludes that these measures satisfy the SIP requirements.

(5) *Monitoring plan.* All of the transportation, Land Use and Energy Conservation measures in appendix IV-G will be monitored through a program outlined on pages 273-277. SCAQMD

and SCAG formed a Monitoring Working Group, which also includes ARB and EPA. The Working Group includes a subgroup, headed by SCAG, for the appendix IV-G measures. The subgroup is charged with developing a monitoring manual that will be used to assess efforts to implement the measures and to determine whether emission reduction targets are being met. EPA is participating in the subgroup and anticipates that subgroup will develop a successful monitoring program. EPA proposes that the measures in Appendix IV-G be supplemented by programs that meet the monitoring criteria.

(6) *Description of measures.* For the most part, the description of the measures are generally acceptable. However, in order for EPA to fully approve the measures and apply emission reduction credits, some measure description will need more detail and clarity. Three common problems need to be addressed prior to final approval of the measures into the SIP for credit: (1) The descriptions of the measures in appendix IV-G often do not clearly identify what entity is responsible for implementation; (2) the measures often do not clearly or specifically identify what actions are to be taken; and (3) the implementation schedules often do not include enough detail, as outlined in the 1982 SIP Guidance. With regards to the latter problem, the measures often provide dates for ordinance adoption, but not implementation. Or, there may be a date for final operation or implementation, but not for key milestones leading to that point. EPA believes that these deficiencies do not reflect faults with the measures themselves, but rather the difficulty of developing such a complex air quality plan. SCAG is already addressing these issues in the preparation of a 1991 update to the AQMP and included clarification on some measures in a letter (June 27, 1990) from Anne Baker, SCAG Director of Environmental Planning, to David N. Jesson, EPA, Region 9.

Since the original SIP submittal, the SCAG Executive Board approved the extension of the deadline for adoption of local air quality elements in general plans from January 1, 1991 to January 1, 1992. The new deadline would be included in the 1991 AQMP revision (Letter from Anne Baker, SCAG Director, Environmental Planning to Dave Howekamp, EPA Region 9 Director, Air and Toxics Division, April 17, 1990). EPA recognizes the need for the extension, given the complexity of developing an air quality element and

amending a general plan. In order for this change to be incorporated in the current SIP action, the new dates must be submitted by the State through the normal SIP submittal process. The submittal should identify exactly which measures the change applies to, as well as the new dates.

(7) *Measures are shown to be capable of achieving estimated emission reduction.* In most cases, the SIP has not thoroughly demonstrated that the measures are capable of achieving the estimated emission reduction benefits. EPA realizes that the nature of these transportation and land use measures makes emission reduction estimates more difficult than for many traditional, stationary source control measures. Future SIP updates will need to rely on various assumptions to develop the reduction estimates. However, the SIP often fails to provide support for the feasibility and reliability of the assumptions used or explain the link between the assumptions and emission reductions. In order for EPA to fully approve the measures, more detailed information on how emission reductions were estimated must be provided.

(8) *Summary of proposed action.* EPA proposes to approve the SCAG, SCAQMD, and ARB commitments to the following measures: 1.a., 1.b., 2.a., 2.b., 2.c., 2.d., 2.e., 2.f., 2.g., 3.a., 3.b., 4, 5, 6, 7, 8, 10, 11, 16, 17, 18.a., 18.b., and 18.c.. Emission reduction credits for the measures will not be approved until the measures meet all of the SIP criteria ("full approval"). EPA proposes to defer action on Measure 13, for reasons discussed below.

(9) *Description and analysis of individual measures—(a) Measure 1.a. (Alternative Work Weeks and Flextime) and Measure 1.b. (Telecommunications)* direct local governments to adopt ordinances by July 1, 1991 to require employers to meet trip reduction targets through alternative work schedules and telecommuting and commits SCAQMD to adopting such a rule, if necessary, by July 1, 1993. Alternative work weeks and telecommuting can be very successful trip reduction strategies, as demonstrated by a recent State of California pilot project and EPA Region IX experience. However, SCAG needs to support the feasibility of the targets and the emission reduction benefits. In developing the measures for full adoption, future SIP updates must support the feasibility of the targets and consider how the measure will work in conjunction with SCAQMD Regulation XV.

In particular, EPA applauds SCAG's efforts to increase participation in

telecommuting, which can improve workers' quality of life, in addition to supporting the National Transportation Policy. SCAG's recent efforts to incorporate additional telecommuting incentives in the measure for the 1991 AQMP update is also encouraging.

(b) *Measures 2.a. through 2.g. (Mode Shift Strategies):* The emission reduction benefits for the seven measures in this group are combined. Prior to full approval, SCAG will need to support the feasibility of the transit mode split and travel reduction assumptions for the measures.

Measure 2.a. (Employer Rideshare and Transit Incentives) requires local governments to adopt ordinances by July 1, 1990 requiring trip reduction plans for facilities with tenants employing more than 100 employees. By July 1, 1991 local governments are to adopt ordinances requiring facilities with 25 to 99 employees to disseminate trip reduction information. Trip reduction ordinances or Regulation XV would be evaluated and expanded to businesses with 25 employees or more. In developing Measure 2.a. for full adoption, SIP updates must explain how it will work in conjunction with SCAQMD Regulation XV and in relation to Measures 1.a. and 1.b.

Measure 2.b. (Parking Management) enjoins local governments to assess a variety of parking management strategies and adopt appropriate measures by January 1, 1991. The strategies include eliminating 100% employer subsidized parking, establishing surcharges for single-occupant vehicles, and establishing caps on the number of parking spaces. The cost and availability of parking is perhaps the most important factor in mode choice. However, current tax laws allow substantial credits to businesses for providing subsidized employee parking, but only minimal credits for subsidizing transit passes and other alternative modes. This measure attempts to correct for this imbalance and is one of the most important trip reduction strategies that should be developed for full adoption. EPA is encouraged by SCAG's recent efforts to incorporate additional incentive approaches in this measure in the 1991 AQMP update.

Measure 2.c. (Vanpool Purchase Incentives) aims to legislate favorable tax credits for vanpools, battery electric vanpools, and clean-fuel vanpools. Local governments are to include provisions for vanpools in trip reduction ordinances. The major portion of this measure requires state or federal legislative action. SCAG and SCAQMD

are committing to pursuing such legislation.

Measure 2.d. (Merchant Transportation Incentives) directs local governments to adopt ordinances by July 1, 1991 requiring merchants to offer mode-shift incentives to customers. If necessary, SCAQMD would adopt a rule by July 1, 1992 to implement the same control methods. While most trip reduction strategies focus on work trips, non-work trips far outnumber work trips. Therefore, this measure is necessary and important in reducing mobile source emissions.

Measure 2.e. (Auto Use Restrictions) directs local governments to amend general plans to identify appropriate measures for reducing trips and congestion at special event centers. By January 1, 1993 local governments are to adopt special event center trip reduction ordinances and by January 1, 1994 they are to implement, as appropriate, auto free zones. If necessary, SCAQMD will adopt a regulation for special event centers. No date is given for SCAQMD rule adoption or implementation, which must be provided for full adoption.

Measure 2.f. (HOV facilities) calls for implementation of the HOV element of the Regional Mobility Plan, which includes about 1,258 miles of exclusive lanes, and provision of HOV by-pass lanes at metered ramps, where feasible. Caltrans is the primary agency responsible for implementation.

Measure 2.g. (Transit Improvements) includes over 100 miles of new commuter rail lines and increased bus service for Omnitrans in San Bernardino and Orange County Transit District. Improved transit service is a necessary component of the mode shift strategies. However, the measure notes that two other major transit systems in the region, Southern California Rapid Transit District (SCRTD) and Riverside transit, do not foresee growth in bus fleets, nor the required replacement of the full fleet with newer, cleaner buses. When developing this group of measures for full adoption, SIP updates should evaluate the adequacy of the transit system in relation to the mode shift goals. Furthermore, while Measure 17 attempts to influence land use patterns to improve jobs/housing balance, there is no specific land use measure that attempts to increase density around rail lines in order to improve transit use.

(c) Measures 3.a. and 3.b. (Goods Movement): These measures attempt to reduce traffic congestion caused by heavy duty vehicles involved in goods movement. Emission reduction benefits are estimated for the measures combined. In developing the measures for full adoption, SDCAG and SCAQMD

should examine how the shift in truck operations will affect peak CO concentrations.

Measure 3.a. (Truck Dispatching, Rescheduling and Rerouting) calls on local governments to amend general plans and adopt ordinances and MOUs by January 1, 1991, to facilitate improved truck routing and scheduling and require shipping and receiving plans. If necessary, SCAQMD would adopt a truck delivery rule by January 1, 1992. The measure also includes truck accident reduction programs, improved emergency response, and improved information systems. The description of the measure for final adoption would identify specific actions and implementing agencies.

Measure 3.b. (Diverting Port-Related Truck Traffic to Rail) calls on the Ports of Los Angeles and Long Beach to develop on-dock yards so that trains would come directly to the dock for loading cargo.

(d) Measure 4 (Traffic Flow Improvements) directs Caltrans, SCAG, and the county transportation commissions to implement 600 ramp meters and HOV by-pass lanes called for in the RMP. Local governments are to improve the traffic signal control systems on 2000 intersections between 1989 and 1993 and 8000 by 2010 and improve the channeling of 125 intersections between 1989 and 1993 and 500 by 2010. The measure needs to include target implementation dates between 1993 and 2020.

(e) Measure 5 (Nonrecurrent Congestion) would reduce delay caused by traffic accidents through the expansion and improvement of incident response programs, freeway management and enforcement practices.

(f) Measure 6 (Aircraft and Ground Service Vehicles) enjoins local governments to adopt airport operation ordinances by January 1, 1991, or SCAQMD to adopt by January 1, 1992, a rule to require modification of aircraft operations and procedures and the use of alternative fuels and technologies for ground service vehicles. SIP updates will need to identify how the requirement for alternative fuels for vehicles differs from or duplicates proposed Rule 1601, which would mandate alternative fuels for fleet vehicles.

(g) Measure 7 (Centralized Ground Power Systems) would require airports, through the ordinances or rules described in Measure 6, to reduce the use of auxiliary power units while air carrier aircraft are parked at terminal gates, through the use of centralized power and air conditioning systems.

(h) Measure 8 (Airport Ground Access) also requires local government

airport operator ordinances by January 1, 1991, or SCAQMD rule adoption by January 1, 1992, to reduce the vehicle trips by airport employees and passengers.

(i) Measure 10 (General Aviation Vapor Recovery) commits SCAQMD to adopt a rule by July 1, 1990, to require vapor recovery systems to capture aviation fuel emissions. SCAQMD started rulemaking procedures but did not adopt a rule by the required date.

(j) Measure 11 (Rail Consolidation to Reduce Grade Crossings) would establish a joint powers agency (JPA) by July 1, 1990, to develop a consolidated railroad corridor along Alameda Street for rail access to the Ports of Los Angeles and Long Beach. Local governments are to establish a separate JPA by January 1, 1993, to develop a consolidated corridor from Los Angeles to San Bernardino.

(k) Measure 13 (Freeway and Highway Capacity Enhancements) would implement the Regional Mobility Plan (RMP) projects for additional mixed-flow capacity on new and existing freeways and highways. The SIP claims that the measure will reduce VOC by 13.3 tons per day by 2010 and will reduce CO by 184 tons per day, because of improved traffic flow. The description of projects in the RMP lacks sufficient detail and schedules. More importantly, the emission reduction estimates do not consider the impact of additional capacity on trip generation, distribution, and mode choice. The effect of capacity on trip generation and travel demand is of particular concern because historically traffic on highways has exceeded capacity far sooner than planned. Unlike the other measures for which emission reduction estimates are not supported, this measure has the potential to increase emissions, which was not considered in the measure.

Therefore, the SIP has not justified the appropriateness of the measure as a SIP strategy, and EPA proposes to defer action on it to allow the State to provide additional information responding to EPA's concerns.

(l) Measure 15 (Electric Vehicles) was not submitted to EPA by ARB. EPA cannot take action upon a measure that was not submitted by ARB.

(m) Measure 16 (High Speed Rail) requires SCAG, local agencies, and Caltrans to initiate by July 1, 1990, a study to evaluate high speed rail. By 2010 a high speed rail line is to be in place between Los Angeles and San Francisco. The SIP will need to justify the assumptions used in the emission reduction estimates and clearly identify the responsible implementing agencies.

The 1990-91 Draft Overall Work Plan for SCAG includes a work element to produce a report on high speed rail, demonstrating SCAG's commitment to the measure.

(n) *Measure 17 (Growth Management)* enjoins local governments to amend general plans and adopt ordinances by January 1, 1991 to attain job/housing balance performance goals consistent with the Growth Management Plan. SCAG is to provide assistance and evaluate actions by January 1, 1994 in order to recommend further actions.

This measure is the most ambitious effort in the Country to seek a better regional balance of jobs and housing. Many of the implementation steps for development of controls at municipal and sub-regional levels are spelled out in Measure 17, the Regional Growth Management Plan (RGMP), and in Appendices 1 and 2 to the RGMP. In order to receive full approval, this measure needs improvement in demonstrating feasibility, local commitment, resources, and adequate predictions of emissions reductions.

The SIP will need to show that the job/housing ratios are feasible as goals for the local jurisdictions to achieve. The SIP should also show that if the ratios are achieved the emissions reductions will occur. The use of a blunt ratio of jobs and housing may not be used as a predictor of emissions if household income from jobs is not shown to be compatible with the cost of housing in the sub-region.

Furthermore, sub-regional areas with poor access to mass transportation and with poor access of pedestrians and bicycles to mass transit pockets still may generate an excessive number of high polluting cold starts. Therefore, a better balance of jobs and housing in those sub-regions may reduce trip length but still not reduce pollution to the extent that SCAG suggests. The sub-regions themselves should be justified in relation to reducing trips, and not simply VMT. In addition, the measure should address the resources needed to form sub-regional entities for setting up performance goals and monitoring progress.

Despite the above criticisms, EPA believes the approach contained in this measure has the potential for contributing important emission reductions following additional refinements and local commitments.

(o) *Measures 18.a., 18.b., and 18.c. (Energy Conservation)* include two measures (18.a. and 18.c.) aimed at energy conservation and one directed at recycling (18.b.). The emission reduction estimates are combined for the measures, but are not adequately

supported. SCAG and SCAQMD are currently working to substantially redevelop these measures. In addition, recent state legislation (AB 939) requires counties to reduce waste going to landfills and is nearly identical to measure 18.b. Measure 18.b. also commits SCAQMD to amend rule 1117 by July 1, 1990 to require glass manufacturers to increase their consumption of glass cullet and require paper manufacturers to increase their use of recycled paper. SCAQMD has not yet approved this amendment.

(10) *Measures requiring SCAQMD rule adoption, if necessary.* In several of the measures, SCAQMD has committed to adopting a rule "if necessary", presumably if local governments fail to adopt certain measures. However, the SCAQMD does not define "if necessary" or provide appropriate criteria for determining the need to adopt District rules. The need to adopt the rules should be tied to whether control measures are adopted by the date specified, whether they result in the projected emission reductions, or whether the Basin is making reasonable further progress in reducing total precursor emissions or precursor emissions from the transportation sector.

6. "State and Federal Agencies" Control Measures

The AQMP assigns to specified Federal and State agencies partial or full responsibility for developing and implementing seven AQMP control measures in this category.

a. *Proposed action.* EPA proposes to take no action on these measures and the qualified commitments to the measures since they lack several of the elements necessary for SIP approval.

(1) *Control of emissions from OCS exploration, development, and production, B-11.* This measure would apply to anticipated exploration and development of petroleum resources within the California coastal waters of Southern California. Proposed controls would apply to emissions from all phases of activity. EPA proposes to take no action on the measure because it may require additional SCAQMD authority or participation by the U.S. Department of the Interior.

EPA shares the State's concern regarding impacts on the SCAB of potential petroleum development activities in federal waters offshore. EPA has participated in a cooperative interagency regulatory development negotiation with DOI to ensure adequate mitigation of air emissions from future petroleum development projects in OCS waters off the California coast. EPA believes the resulting revised DOI

regulations should greatly improve the stringency of required control for new OCS projects.

Since both the degree of future OCS activity affecting the SCAB and the applicable DOI-required control technologies are unknown, the SIP's projected OCS emissions and the emissions reductions claimed for this measure are speculative.

(2) *Control of emissions from pesticide application, E-1.* Pesticides are widely used by agricultural and commercial enterprises to control pests. Pesticides come in many forms with varying quantities of VOCs. The VOC may represent the active ingredients, inert ingredients, and/or carrier medium for pesticide application. California law states that the California Department of Food and Agriculture (CDFA) has jurisdiction over regulation of pesticide solvent emissions. Because the regulation of pesticide VOC emissions will impact a variety of environmental programs (e.g., Federal Insecticide, Fungicide, and Rodenticide Act), a regulation for reducing VOC emissions from pesticide applications in the SCAB would need to be implemented in cooperation with the CDFA, the County Agricultural Commissioner, and other federal agencies. Potential methods for reducing VOC emissions include: reformulation, substitution, and improved application techniques.

In late 1989, the California Pesticides Solvents Task Force was formed under the auspices of the California Air Pollution Control Officers Association. The task force is investigating potential approaches for reducing VOC emissions from pesticide applications. This task force consists of members of California pollution control districts, ARB, CDFA, EPA Region 9, the California Farm Bureau, and the agricultural/chemical industry. In addition, EPA recently began preparing a work plan for the development, proposal, and issuance of official recommendations for the control of VOC emissions from the agricultural application of pesticides. EPA's goal is to issue a report on control techniques that can be used in areas where pesticide application is impacting progress toward attainment of the ozone standard. EPA has tentative target dates of April 1991 for a draft and October 1991 for issuance of the final report. The preparation of EPA's recommendations will be coordinated with the CDFA, EPA's Office of Pesticide Programs, representatives from other EPA offices, and other potentially affected parties.

Emission reductions anticipated in the AQMP (measure E-1) are as follows:

Emission Commitment (Tons of VOC/Day): The base-year (1985) and projected years (2000 and 2010) control category emission inventory totals are: 5.6, 6.9 and 7.5, respectively. The projected year control measure emission reductions are: 2.8 and 3.0 respectively. Thus, the projected year control category emission balances are: 4.1 and 4.5, respectively.

Actual emission reductions expected within the SCAB will ultimately depend on the development and final promulgation of a control measure by EPA and/or CDFA. Under the FIP, EPA proposes to implement pesticides control in the SCAB as a "backstop" measure unless equivalent rules are adopted by the State or are not required for RFP or attainment.

(3) *Lower emission standards on new jet aircraft engines, I-2.* For this measure the SCAQMD depends on the EPA to adopt new emissions standards for aircraft engines. EPA proposed new standards in 1978 (43 FR 12615, March 24, 1978), but the proposal was withdrawn in 1982 (47 FR 58464, December 30, 1982) and development of new standards is unlikely in the near term. In any case, emissions reductions from this source are not creditable at this time.

(4) *Control of fugitive emissions from marine vessel tanks, I-3.* The transfer of volatile organic liquid cargoes to and from ships, together with ballasting and housekeeping operations, result in the release of VOCs into the atmosphere. Under this measure, the vapors would be captured, then condensed or incinerated. The technologies involved are fairly straight forward, though details of administration remain to be worked out with the Coast Guard and port authorities.

(5) *Control on switching locomotives, I-6.* Under this measure the SCAQMD proposes to reduce emissions from railroad locomotives. A number of promising control techniques are sited, but no emission reduction estimates are offered, as further study is needed.

(6) *Replacement of high-emitting aircraft, SCAG measure #9.* SCAG measure 9 would enact an MOU by January 1, 1991 to phase out FAR Part 36 Stage II aircraft in favor of Stage III aircraft by 2010. In developing the measure for full adoption, the SIP will need to provide the necessary commitments from other entities and a more specific implementation schedule.

(7) *Railroad Electrification, SCAG Measure #14.* This measure requires SCAG and AQMD to conduct a feasibility study of railroad electrification. Railroads are to implement electrification projects. The

description of the measure and emissions reduction estimate lack sufficient detail to allow credit. The SIP does not provide an estimate of the length of rail lines that would be electrified, nor the use of those lines.

7. Proposed Action on Tier II Measures

The AQMP includes ambitious emission reduction targets and commitments to pursue technological advances or regulatory initiatives in the areas of vehicle emissions control, surface coating and solvent use, and stationary source control. Tier II measures are those expected to be available for implementation in the next 10 to 15 years. Most of the measures are projected to be fully implemented by the year 2000, but the AQMP does not clearly display either adoption or implementation schedules, since these schedules will be determined by the pace of technological development over the next several years. The control measures fall into three categories: Transportation, Surface Coating and Solvent Use, and Stationary. Descriptions of the measures are contained in appendices IV-A, E, F, and G, though it should be noted that further progress in specifying the measures has occurred since the AQMP's descriptions of them. While all but one of the measures (the control measure for passenger vehicles) currently lacks specific definition and technical demonstrations of feasibility, EPA proposes provisional approval of the commitments by the SCAQMD and ARB to an ongoing process to develop these measures further in order to achieve the assigned emission reductions. The timely success of these measures is critically important to avoid the social and economic dislocations that would result from imposition of federal backstop measures applicable to the affected source categories. See also the discussion at V.D.4.c. ("Control Measures That Depend Upon Technology Development") regarding the State's technology development projects associated with these measures and the implications of EPA's approval of the SCAQMD and ARB commitments to the technology-forcing measures.

a. *Transportation measures.* The goals of the Tier II transportation sector measures are to achieve a 40% use of low emitting passenger vehicles, a 70% use of low emitting freight vehicles, a 100% use of low emitting transit buses, and a 50% reduction of the remaining off-road vehicle emissions after implementation of Tier I measures. The total emission reductions claimed from these measures are: 17 tpd ROG, 206 tpd CO, 82 tpd NO_x, 4 tpd PM, and 10 tpd

SO_x. Accomplishment of the goal of 40% use of low emitting passenger vehicles should be achieved by either the State or by federal implementation of the Ultra Clean Motor Vehicles Program discussed below as part of the FIP (see section VII.G.). The development of low emitting freight vehicles and buses is being pursued by the SCAQMD in its Clean Fuel Program, by the ARB, and by the California Energy Commission. The ARB and the SCAQMD are working jointly to identify appropriate control approaches and emissions levels for off-road vehicles, a category which includes pleasure boats, railroad switch engines, non-electrified linehaul locomotives, fork-lifts, non-farm equipment, and off-road recreational vehicles.

b. *Surface coating and solvent use.* The Tier II goal for this control category is achieving a 50% reduction of the remaining ROG emissions after implementation of Tier I. The ROG emission reductions from the measure are 116 tpd. Appendix IV-A, pp. II-6 to II-9, describes specific control approaches for achieving higher transfer efficiency application and alternative coating technologies, and discusses very briefly a program to reformulate consumer products and develop alternative propellant or dispensing mechanisms.

c. *Stationary sources.* Two Tier II stationary source control approaches relating to ozone and CO are included in the AQMP. The emission reductions expected from the measures are: 16 tpd ROG, 16 tpd CO, and 24 tpd NO_x. The first control measure is an emissions fee assessed on emissions produced from refining petroleum products at refineries within the South Coast for export outside of the South Coast. The presumed effect of the measure would be to discourage refining of petroleum in the South Coast and encourage either relocation of refineries out of the area or at least transport of surplus unrefined petroleum by pipeline outside of the basin. The AQMP schedules acquisition of legal authority to implement the emissions charges in 1992.

The second measure is an emission charge for all source on a per emission unit basis, indexed to the additional costs of complying with new goal standards for the source category. Under current State law, the SCAQMD must submit a draft of an emission charges rule to the State Legislature, and additional enabling legislation is required before the SCAQMD can assess emission charges. The AQMP commits to secure this legislative authority by the end of 1990.

8. Proposed Action on Tier III Measures

The AQMP contains three Tier III control measures for implementation from the year 2000 through 2007. The first control measure is a requirement for non-reactive surface coatings, solvents, and consumer products. Emission reductions of 92 tpd ROG are associated with this measure. The second measure is a requirement for extremely low emitting passenger vehicles, which would be essentially emission free. Emission reductions ascribed to this measure are: 88 tpd ROG, 1023 tpd CO, and 90 tpd NO_x. The third measure would require that all other mobile sources be operated by low emitting technologies or fuels. This measure is projected to achieve the following reductions: 0.3 tpd ROG, 73 tpd CO, and 31 tpd NO_x.

As with Tier II measures, EPA proposes to approve the commitments by the ARB and AQMD to develop these controls to achieve the scheduled emission reductions.

9. Proposed Action on the Conformity Procedures

a. Clean Air Act and EPA conformity requirements. Section 176(c) of the Act states in part that "No department, agency, or instrumentality of the Federal Government shall (1) Engage in, (2) support in any way or provide financial assistance for, (3) license or permit, or (4) approve, any activity which does not conform to a plan after it has been approved or promulgated under section 110. No metropolitan planning organization designated under section 134 of title 23, United States Code, shall give its approval to any project, program, or plan which does not conform to a plan approved or promulgated under section 110."

In the Advanced Notice of Proposed Rulemaking (ANPRM) for the promulgation of a Federal Implementation Plan (FIP) for the South Coast Air Basin (*Federal Register*, Vol. 52, No. 235, Page 49517, December 7, 1988), EPA specifically addressed the conformity issue. EPA acknowledged that SCAG had formed a conformity working group to refine the 1982 conformity requirements and stated that "the FIP would address any deficiencies that remain after agency [SCAG and SCAQMD] revision." Furthermore, "EPA will review that South Coast Plan according to, and base any needed FIP requirements on, previously published notices addressing conformity. The elements needed for a fully effective conformity program include: (a) Conformity review procedures, (b) growth projections and a disaggregation

process, (c) estimates of emissions for major federal projects, (d) conformity review criteria (45 FR 21590), (e) specification of information that must be provided for conformity determinations (growth, emissions, TCM consistency, modeling) and (f) requirements for a finding of non-conformity if projects do not satisfy the review criteria or insufficient information is provided." The conformity criteria referred to in 45 FR 21590 (April 1, 1980) include the requirement that "the increased emissions resulting from the action do not contribute to the violation of any NAAQS" and that "the action is consistent with the transportation control measures that are provided for in the SIP" (45 FR 21593).

The 1982 EPA SIP Guidance (46 FR 7182, January 22, 1981) required "Administrative and technical procedures and agency responsibilities for ensuring, in response to section 176(c) of the Clean Air Act, that transportation plans, programs, and projects approved by a metropolitan planning organization (MPO) are in conformance with the SIP" (p. 7187). The Guidance also stated that, "In preparing the 1982 SIP revision, states and local governments should identify, to the extent possible, the direct and indirect emissions associated with major federal actions, including wastewater treatment facility grants, that will take place during the period covered by the SIP" (p. 7188). EPA encouraged the use of existing review processes, such as those required by the National Environmental Policy Act and the Office of Management and Budget's Circular A-95.

The 1982 SIP Guidance referred to interim criteria for use in making and reviewing conformity determinations that were included in an advance notice of proposed rulemaking (ANPRM) published by EPA on April 1, 1980 (45 FR 21590). Criteria and procedures for evaluating the direct and indirect air quality effects of wastewater treatment facilities were included in the section 316 policy published on August 11, 1980 (45 FR 53382).

The ANPRM appearing on April 1, 1980 (45 FR 21590) stated that "The responsible federal department's formal conformity determination should verify that * * * (4) the increased emissions resulting from the action do not conflict with the emission reduction requirements of the SIP; (5) the increased emissions resulting from the action do not exceed the PSD increment for the area; (6) increased emissions resulting from the action do not contribute to the violation of any

NAAQS; (7) the action is consistent with the transportation control measures that are provided for in the SIP; and (8) the action complies with all other special provisions and requirements of the SIP" (page 21598). EPA did not take final rulemaking action on this advance notice.

b. SCAG/SCAQMD Conformity Procedures. SCAG and SCAQMD adopted the 1989 Conformity Procedures to ensure that governmental actions and projects do not prevent attainment of the NAAQS (appendix IV-G, page 279). The Procedures represent an ambitious effort to coordinate often conflicting public goals and numerous public agencies that have not been involved in previous air quality planning efforts by including four components: General development, transportation, wastewater treatment, and local government implementation. The procedures go far beyond previous conformity efforts adopted by SCAG on April 21, 1989, and by SCAQMD on August 4, 1989, after the adoption of the AQMP. Therefore, the original ARB SIP submittal of the AQMP on August 18, 1989 included the conformity procedures from the 1982 SIP and recognized that new procedures would be forthcoming. In Resolution 89-66 adopting the AQMP, ARB directed "the Executive Officer to review the updated conformity procedures which were adopted by the District and SCAG as expeditiously as feasible so that, if acceptable, they may be submitted to the EPA as a replacement for the current [1982] procedures" (page 9). The 1989 Conformity Procedures were transmitted to EPA by ARB on July 19, 1990.

In order to address concerns about and implement the 1989 Conformity Procedures, SCAG and SCAQMD established the Conformity Working Group. This effort involved extensive participation from various sectors, including the county transportation commission's, state, federal, local and wastewater agencies leading to increased integration of air quality and transportation, wastewater and land use planning. The Working Group developed and SCAG adopted in March 1990 "Guidance for Implementation of Conformity Procedures" (included in the TSD). The Guidance is not proposed as a revision to the SIP. However, the document interprets the Procedures and provides a more clear indication of how SCAG will implement the Procedures. Therefore, while the Guidance will not be included in the SIP, it cannot be ignored in reviewing the Procedures for inclusion into the SIP. In cases where the Procedures lack sufficient detail to

assess consistency with the review criteria described above, EPA proposes to use the Guidance to aid in the review.

c. Proposed action—(1) General development component—(a)

Description and analysis. The General Development Component of the Conformity Procedures includes three tests of conformity for regionally significant projects that are submitted to SCAG for review through the Inter-Governmental Review (IGR) process (also known as the A-95 process). This process relies upon authority and responsibility created by the California Environmental Quality Act (CEQA), which requires that projects be analyzed for their impact on the environment, including air quality. Through the IGR process, SCAG will comment on projects using the three tests:

The project should improve or have a neutral effect on the jobs/housing balance for the city or conform with appropriate jobs, housing or population indicators for the city and improve or have a neutral effect on the jobs/housing balance for the sub-region;

The project is required to demonstrate vehicle trips and vehicle miles have been reduced to the greatest extent feasible; and

The project's EIR/EIS must demonstrate the following:

(i) The project will not have a negative impact on long term air quality;

(ii) The transportation, land use, and energy conservation control measures are used to the extent possible to mitigate the air quality impact of the project; and

(iii) The project's impact on air quality is analyzed on an appropriate city, county, or sub-regional level and regional level.

SCAG will recommend approval or denial of a project. Nonconforming projects could be denied by the lead agency, or a mitigation plan could be developed, with recommendations from SCAG and SCAQMD. If the local government amends its general plan to be consistent with the AQMP, individual project review is not required. Conformity review would be limited to an annual cumulative impact review performed in conjunction with the Reasonable Further Progress Report (RFP).

Under current law SCAG does not have the permitting authority to approve or deny general development projects. SCAG's role is to comment on the project's conformity with the SIP. Authority to approve or deny the project still rests with the lead agency for the project (usually the city or county). However, if the conformity and RFP processes reveal that nonconforming

projects are being approved, the population, housing, and jobs forecasts are being exceeded, and the growth management control measure (appendix IV-G Measure 17) is not being implemented (or any other control measure), SCAG and SCAQMD would need to revise the SIP and compensate for any emission reductions that do not occur. This could result in the implementation of the contingency measures or other, more strict measures. Furthermore, if emission reductions are not achieved according to the schedule defined in the proposed FIP, EPA's proposed backstop measures would remain in place.

(b) *Proposed action on general development component.* There is nothing in the Act or regulations that specifically requires general development conformity of projects that do not require MPG approval. However, section 110(a)(2)(B) of the Act requires the SIP to contain "such other measures as may be necessary to insure attainment and maintenance of [NAAQS]." SCAG and SCAQMD view the general development component as necessary and ARB concurred with this finding. Given the significant amount of growth expected in the Basin and the significance of the growth management control strategy (Measure 17) in terms of emission reductions, EPA concurs and proposes to approve the General Development Component into the SIP. In addition, given the severe actions necessary if emission reductions are not on schedule, a process, such as general development conformity, that advances compliance with the proposed SIP's growth projections and control measures is essential.

(2) *Transportation component.* The Transportation Component of the Conformity Procedures consists of three sections: Regional Mobility Plans (RMP), Regional Transportation Improvement Programs (RTIP), and Locally Funded Projects not included in the RTIP. SCAG is the agency responsible for developing the RMP and RTIP.

(a) *RMP conformity.* The RMP section requires project-specific amendments to the RMP and total RMP revisions to demonstrate consistency with the AQMP/SIP. Non-conforming projects can not be included in the RMP. The approving agency must demonstrate that a project will have a positive impact on air quality, that it is consistent with the AQMP/SIP, and that it will not impede implementation of TCMs in the AQMP/SIP. These criteria are consistent with EPA criteria.

(b) *RTIP conformity.* The RTIP conformity process is divided into two steps. The first step requires

transportation projects included in the out-years (years 3-5) of the RTIP to be identified in the RMP and priority must be given to transportation control measures that can be funded under existing mechanisms. A non-conforming RTIP is ineligible for state or federal funding unless one of two options is followed: adjust programming of projects so that the RTIP is in conformance or drop projects which render the RTIP non-conforming.

The second step has two components. Step 2(A) covers project inclusion in the biennial element (years 1-2) of the RTIP and is perhaps the most important element of the Procedures. The project's draft EIR and/or EIS is submitted to SCAG for review to demonstrate the following:

The project is phased, sized, and located according to the growth shown in the Growth Management Plan (Part A).

The impact of the project on long term air quality is analyzed on a transportation corridor level, even if the project is phased or incrementally developed (Part B).

The air quality impact of the project is compared to alternatives on a corridor level and alternative are compared to each other (Part C).

Demand management, HOV improvements, and transit are required to be evaluated as alternatives and mitigation measures if necessary (Part D).

The project is consistent with RMP policies relating to air quality (Part E).¹

From this analysis, projects are found to conform or not conform. Unless modified to be in conformance, non-conforming projects are to remain in the out-years of the RTIP and are ineligible for state or federal funding.

This process does not clearly meet the criteria outlined in the South Coast FIP ANPRM and 1982 SIP Guidance that require conformity review criteria, including the provision that emissions will not cause or contribute to NAAQS violations. The proposed conformity criteria are that projects must be included in the RMP and be subject to the corridor level analysis of air quality impacts. How the air quality analysis is used is not explained. It is unclear what would happen if the EIR/EIS analysis revealed that the project would result in a net increase in emissions of a pollutant for which the Basin violates

¹ These policies are general in nature and do not include specific air quality criteria. The policies relate to strategies, such as land use decisions, HOV lanes, demand management, and transit, that are generally considered to benefit air quality.

NAAQS. In the case of the South Coast Air Basin, where frequent NAAQS violations occur, increases in emissions from transportation projects would interfere with the timely attainment of the standards.

The Guidance provides additional information. In describing the "Simplified Corridor Level Analysis" used for the conformity review, the Guidance states that if a proposed project is consistent with its description in the RMP, completion of the Simplified Corridor Level Analysis shall satisfy the requirements of parts B and C of the EIR/EIS analysis (listed above). "If the proposed project differs from the RMP or is not included therein, then it will be subject to conformity review. Such a project will be found to have satisfied the requirements [of parts B and C] if a comparison of the project's air quality impacts to the AQMP's regional emissions estimates demonstrates that the impacts of the project 'in' is equal to or better than the project 'out' " (page D-3). It is clear from this description that if the project is proposed as described in the RMP and increases emissions, the project could still conform because the analysis was performed.

Reliance solely on project inclusion in the RMP to determine conformity is not appropriate, given that the proposed SIP (which relies upon and includes parts of the RMP) does not contain enough measures for full approval to assure expeditious attainment of the NAAQS. Furthermore, the RMP is a very broad document in which projects and programs are often not specifically defined, and there is a considerable shortfall in funding the RMP.

In addition, the Guidance description of the Simplified Corridor Level Analysis raises further questions about how the Procedures will be implemented. As proposed, project sponsors would estimate emissions for the year 2010 based upon data that assume that the transportation and land use measures in the proposed SIP are implemented and successful. This will result in an optimistic, best case analysis because local governments have not yet committed to implementing and enforcing the measures, and full funding is not currently available for many measures. Therefore, it is not appropriate that a capacity enhancing highway project rely upon these measures to show an air quality benefit, particularly when the measures could not be fully approved as part of the SIP.

Furthermore, under the National Environmental Policy Act (NEPA) the primary purpose of an environmental impact statement (EIS) is to accurately disclose the potential environmental

impacts of a project for the decision-making process. By only considering a best case scenario, as the corridor level analysis proposes, this purpose is not fulfilled. Therefore, the corridor level analysis must consider a scenario that includes only those measures that have legally enforceable commitments from the implementing agencies.

The proposed corridor level analysis also assumes that the same number of trips will occur with or without the project. This is an unrealistic assumption; a capacity enhancing project will affect congestion levels and travel time, which will in turn affect people's decisions whether, where, when, and how to make trips. The effect of congestion levels on travel demand should be considered in the corridor level analysis in order to accurately judge air quality impacts.

Step 2(B) requires SCAG to analyze the Biennial Element of the RTIP to ensure that appropriate AQMP/SIP control measures are programmed as scheduled and in a manner that will lead to targeted emission reductions. If the RTIP does not conform, it is ineligible for state and federal funding. This step is necessary to ensure SIP measure implementation. With the improved schedules necessary for the measures to receive full approval, this part of the conformity review will be even more effective.

(c) *Locally funded project conformity.* Conformity review of regionally significant, locally funded projects that are not included in the RTIP is similar to that for RTIP projects. The project is required to be consistent with the goals, policies, and programs of the AQMP/SIP. The project EIR/EIS must demonstrate that the project will have a positive impact on long term air quality and include an analysis identical to that for RTIP projects (parts A through E, above). SCAG recommends approval or denial of the project to the lead agency, which then could deny or modify the project in order to conform. According to the Procedures, non-conforming projects are not eligible for funding by County Transportation Commissions (CTC). However, it is unclear whether the four CTCs have agreed to this provision. Similar to the General Development Component, SCAG would only serve as a commenting agency for these projects.

(d) *Proposed action on transportation component.* In general, the Procedures provide an adequate framework for judging the conformity of transportation plans, programs, and projects. Transportation conformity is essential to the success of the SIP. The process that SCAG and SCAQMD developed

resulted from extensive cooperation between many agencies will further the goal of reducing emissions from the transportation sector.

However, the Procedures are vague regarding criteria for RTIP project conformity. The South Coast FIP ANPRM clearly stated that the conformity program must include review criteria consistent with 45 FR 21590, and that the FIP would address any deficiencies. Several times prior to receiving the proposed SIP revision EPA expressed its concern over the lack of criteria and reliance on project inclusion in the RMP for conformity. However, the concern was not addressed by SCAG and the Conformity Working Group. Therefore, EPA is requesting a revision to the Conformity Procedures to include the following criteria for projects to be included in the biennial element of the RTIP: A project will be judged to conform with the SIP/FIP if emissions resulting from the action or related actions do not cause or contribute to the violation of any NAAQS and if the action is consistent with all provisions and requirements of the SIP and FIP.

In assessing the emissions from the transportation project, the corridor level analysis must use realistic assumptions. It would not be acceptable, particularly for NEPA documents, to only consider a scenario where all the proposed SIP measures are implemented. The analysis should consider a scenario where only the approved SIP measures (or those proposed for approval) and those which have full commitments from the implementing agencies are implemented. The analysis should also assess potential increases in emissions due to the impact of the project on trip generation, trip distribution, mode choice, VMT, and growth and land use. If no EIS or EIR is prepared for the project, the corridor analysis would be provided in an equivalent format. In addition, a project that is judged to conform cannot be altered significantly so as to change potential air emissions impacts prior to final project approval or construction.

EPA proposes to approve the Transportation Component of the Conformity Procedures providing that the major issues identified above are addressed.

(3) *Wastewater treatment conformity.* The Wastewater Treatment Component of the Conformity Procedures is divided in two sections: conformity findings with and without an updated areawide wastewater treatment management plan (208 Plan). Within each section are criteria for conformity for wastewater treatment facilities and for National

Pollutant Discharge Elimination System (NPDES) permit renewal.

(a) *Facility conformity.* Facility conformity is a two step process. In the case without an updated 208 Plan (which is the current situation), new and upgraded facilities are required to be sized and service phased according to the growth shown in the Growth Management Plan (GMP). This level is to be reflected in the facility's NPDES permit. In the case with an updated 208 Plan (presuming the 208 Plan conforms with the SIP) the service is required to be phased according to the growth in the GMP and this must be reflected in the NPDES permit. Sanitation districts are encouraged to size facilities based on wastewater engineering factors and cost effectiveness.

In the second step, the Procedures explain that, "since the phasing of service is dependent upon the land use decisions of local government, a key element of conformity is the local adoption of an air quality element into the local General Plan" (page 303). If all the local governments in the service area adopt air quality elements consistent with SCAG/SCAQMD guidelines and revise other elements of the general plans to be consistent, then no further conformity review is required. If this is not the case, the Procedures state that EPA and the Regional Water Quality Control Board (RWQCB) are the agencies solely responsible for making conformity findings on the facility, funding, and NPDES permit and are the agencies responsible for developing a plan to mitigate the impacts of the non-conforming general plans. When an updated 208 Plan is in place, the Procedures state that SCAG will recommend a conformity finding to EPA and RWQCB, including a mitigation plan developed by the cities in the service area, the treatment agency, and SCAG.

Several of these statements need clarification. First, the procedures are vague regarding what would constitute a conforming general plan. SCAG has adopted guidelines for air quality elements, but SCAQMD has not adopted such guidelines. The proposed SIP (appendix IV-G) includes four measures, including growth management, that are to be implemented specifically through air quality elements and general plans. However, SCAG's Guidance states that the local jurisdictions must commit to implementing all appropriate local government measures in the AQMP (page 8). This goes further than the stated goals of the Procedures—to assure that the air quality impacts of population in the service area are

consistent with the AQMP and to encourage local government adoption of air quality elements. EPA requests that SCAG and SCAQMD provide further information defining this portion of the Procedures.

Second, under sections 176(c) and 316 of the Clean Air Act, EPA is responsible for assuring conformity for wastewater treatment facilities that EPA engages in, supports in any way, provides financial assistance for, licenses or permits, or approves. SCAG, as the MPG, is responsible for ensuring conformity for projects, programs, and plans that it approves. If the facility does not involve any EPA action, EPA is not responsible under the Clean Air Act to assure conformity.

Third, EPA did not agree to develop, nor is the agency in the position to develop, local mitigation plans for facilities. SCAG and the Working Group agree, and the Guidance states that the responsibility for developing mitigation plans lies with the wastewater treatment facility. The facility will work with local governments, SCAG and SCAQMD to develop the plan, which will be forwarded to EPA for approval. However, only the Procedures are proposed to be included in the SIP, not the Guidance. Therefore, EPA requests that SCAG and SCAQMD submit, through ARB, a SIP revision correcting this error in the Procedures. Failing this, EPA would need to disapprove this portion of the Procedures, leaving a major hole in the process.

(b) *NPDES permit conformity.* Conformity review for NPDES permit renewals is similar to that for facilities and does not vary dependent upon an updated 208 Plan. If the jurisdictions in the service area exceed the population targets in the GMP, a mitigation plan must be developed to offset the negative impacts. NPDES permits are conditioned to require the development and implementation of the mitigation plan, which requires approval from SCAQMD and SCAG. SCAG's Guidance includes the same clarification of agency responsibility for developing mitigation plans as discussed above. The Guidance raises some question as to the applicability of the conformity finding on the NPDES permit to conformity of new or upgraded facilities. NPDES permits are usually renewed every five years. If a proposed facility is defined in a conforming NPDES permit, the facility's conformity review might be simplified in certain cases. However, EPA cannot agree to prejudice its own conformity decisions or those of other agencies which would occur under possible different circumstances in

future years. If a mitigation plan was required in the NPDES permit, the plan should be fulfilling its intended purpose. If the SIP has been revised since the NPDES permit review, conformity must be judged against the revised, applicable SIP. Furthermore, the population and jobs/housing balance targets for the service area should still conform with the SIP.

(c) *Proposed action on wastewater component.* The Wastewater Component of the Conformity Procedures generally meets EPA criteria. As with transportation and general development conformity, the process is vitally important to the successful implementation of the SIP and improving air quality in the region. The indirect impacts of wastewater treatment facility expansion must not circumvent progress in achieving air quality standards.

The analysis above clarifies EPA's interpretation of the Procedures. In addition when determining whether the facility or service is sized according to the GMP and SIP, the agencies approving the project must consider not only the use of the GMP growth projections but what factors are applied to the growth figures to determine facility service size. With regard to the provisions requiring mitigation plans, EPA considers the Procedures adequate so long as they are implemented to fully offset the air quality impact of the non-conforming jurisdictions. Mitigation plans failing to meet this criteria would be disapproved by EPA.

EPA proposes to approve the Wastewater Component of the Conformity Procedures providing that the major issues identified above are addressed. In particular, EPA is requesting that a portion of the Procedures be revised to reflect current agreement between the implementing agencies for developing mitigation plans.

(4) *Local government implementation—(a) Description and analysis.* The fourth and last component of the Conformity Procedures is intended to "provide an impetus to local governments to implement the AQMP; and to provide a mechanism for ensuring that emissions do not increase in geographic areas where the AQMP is not being implemented" (page 281). SCAG and SCAQMD will use the Reasonable Further Progress (RFP) report process to determine whether local governments are adhering to the transportation, land use, and energy conservation measures in the AQMP (appendix IV-G) and ensuring that applicable projects are in conformance

with the AQMP/SIP. If local governments are not implementing the AQMP/SIP, SCAG and SCAQMD will notify the local governments and "other regulatory activity can be considered in these non-conforming geographic areas." SCAG and SCAQMD did not develop guidance to implement this portion of the Procedures. However, the SCAG Monitoring Working Group is developing a process to assess local government implementation of AQMP/SIP measures through the RFP reporting process.

(b) *Proposed action on local government component.* Local government commitment to implementing the SIP is essential to attaining and maintaining the NAAQS. While not specifically required under section 176(c), SCAG and SCAQMD have determined that this component is necessary to achieve the objectives of the AQMP and EPA agrees with this finding. Therefore, EPA proposes to approve the Local Government Component of the Conformity Procedures.

10. Proposed Action on Contingency Measures

The AQMP contains 8 contingency measures, which are briefly described and incorporated in the adoption commitments by the ARB, SCAQMD, and SCAG. The measures are: Emission Charges on Gasoline and Diesel Fuels Used by Motor Vehicles, Limits on Vehicle Registration, Emission Charges on Parking Lots, Emission Charges on Vehicle Use, Reduction of VMT to 1985 Levels, Highway User fees, Oxygenated Fuels Program, and Time and Place Control Measures. Each of these measures is assigned to one of the three agencies for further study and, in the case of four of the measures, acquisition of necessary legislative authority. The measures have no legally enforceable effect as backstops or guarantees for the plan's control measures since they appear merely as concepts for future development. EPA therefore proposes to defer action on the measures. See also the discussion at V.J. ("EPA Action on Contingency Plan") regarding the specific SIP requirement for a transportation measure contingency plan.

E. EPA Action on Reasonably Available Control Measures

EPA proposes to conclude that the SIP will meet the requirements of the Act relating to RACT for stationary and area sources if the SIP commitments are reasonably available transportation control measures, and I/M programs. The SCAQMD has committed to correct

VOC RACT deficiencies in response to the national SIP call of May 26, 1988. The most recent commitment is to a schedule for correction of the remaining deficiencies by September 1990. If the SCAQMD has not corrected all deficiencies by that date, EPA will propose disapproval of the rules and promulgation of substitute federal regulations.

F. EPA Action on Air Quality and Emissions Data Bases

1. Introduction

Section 172(b)(4) of the CAA requires that nonattainment area implementation plans include a comprehensive and current inventory of pollutant emissions, and that this inventory be updated frequently enough to assure "reasonable further progress" toward attainment see sections 171(1) and 172(b)(3). The emission inventory is important for a number of reasons. First, it is used to identify pollution sources for new or additional controls and so provides a basis for the control strategy. Second, the inventory provides a means of assessing progress in achieving reductions from existing controls. The reasonable further progress reports include annual updates to the inventory as well as air quality data to indicate whether air program goals are being met and whether corrective action is necessary. Third, both current and projected inventories are used as inputs to air quality modeling to demonstrate attainment of the NAAQS.

EPA's most recent guidance on emission inventories is set forth in *Emission Inventory Requirements for Post-1987 Ozone State Implementation Plans* (EPA-450/4-88-19) and *Emission Inventory Requirements for Post-1987 Carbon Monoxide State Implementation Plans* (EPA-450/4-88-20). New guidance in these documents include use of 1987 or 1988 as a base year, inclusion of sources within 25 miles of the nonattainment Metropolitan Statistical Area (MSA), and individual listing of sources emitting over 10 tons per year of volatile organic compounds. The new guidance is intended to improve the quality of inventories submitted to EPA. In general, the inventory should have documentation of its methodologies, variables, and data sources sufficient for independent calculation of the emission estimates. Quality assurance procedures should be described.

Consideration of rule effectiveness is a new consideration for emissions inventories. No rule is 100% effective; ambiguous wording, imperfect compliance test methods, deterioration of control equipment, varying levels of

training by maintenance personnel and compliance inspectors, and other factors conspire to lessen the emissions reductions nominally associated with a rule. In the guidance documents referenced above, EPA proposes that 80% of the nominal reductions are to be counted, unless a different rule effectiveness can be shown.

A given pollution source falls into one of three broad categories: Point, area, and mobile sources. A point source is generally a localized industrial facility large enough to merit individual measurement of its emissions; it may have many processes and emission points within it. Petroleum refineries and electric generating stations are examples of point sources. Area sources are smaller, more numerous, and more geographically distributed than point sources. Gasoline service stations and dry cleaners are examples. Emissions for an area source category are generally estimated by multiplying sales, employment, or population data by "emission factors." Finally, mobile sources include vehicles driven on or off public roads together with planes, trains, ships, and utility equipment such as lawn mowers. The emissions from some mobile sources are estimated using area source methods, but on-road vehicle estimates involve more complex models of traffic speed and volume, and of emissions characteristics of the vehicle fleet as it changes over time. Methodologies for all three types of sources are constantly improving, but there is still a fair amount of uncertainty in the estimates.

2. VOC, CO, and NO_x Inventories

The SCAQMD, SCAG, and ARB have prepared comprehensive emission inventories for all criteria pollutants. The inventory is presented in Appendices III-A and III-C of the AQMP. Point sources are the responsibility of SCAQMD; area sources are a joint effort of SCAQMD and ARB. The mobile source inventory is produced by ARB using traffic information provided by SCAG. SCAG also provides demographic and economic projections to SCAQMD for future year inventory estimates. ARB coordinates the effort and prints the tables provided in the plan. The combined technical expertise of the three agencies results in one of the most sophisticated and detailed inventories in the country.

Any source emitting more than 18 tons per year of any criteria pollutant is considered to be a point source. The base year used was 1985, with some of the area source data being updates from 1983 figures. The geographical area

covered is SCAB, as defined in title 17 of the California Code of Regulations, volume 3 section 60104. It includes all of Orange County and the non-desert portions of Los Angeles, Riverside, and San Bernardino counties.

Emissions are listed in tons per day for 163 control categories for annual average day, average summer day, and average winter day. Other tables give the annual average emissions for each county for various combinations of "activity" (industry), "process" (e.g., boilers, storage tanks), and "entrainment" (working material, e.g., fuel or solvent). For example, the Activity and Entrainment Table lists 651 different emissions categories, the Major Facilities Table lists 924 point sources.

The area source methodologies used are described in ARB's *Methods for Assessing Area Source Emissions in California*. This is an evolving document, updated with the results of both California and national studies. It was not submitted as part of the plan; indeed the current version of the area source book is not available.

ARB also publishes *Methodology to Calculate Emission Factors for On-Road Motor Vehicles*, which is the basis for its EMFAC7D model. This model calculates emissions per mile for California on-road vehicles, which are subject to different standards than those in the rest of the country. SCAG performed a detailed link-by-link analysis of the road system, under several highway-building scenarios, to arrive at vehicle speeds and vehicle miles traveled (VMT). Together with the emission factors from EMFAC7D, these determine on-road vehicle emissions.

The ROG inventory shows emissions of 1246 tons per day (tpd), of which nearly half (46%) is due to on-road vehicles. The remainder is split between industrial and residential/commercial sources, with solvent use a substantial fraction.

In contrast, the CO inventory of 5430 tpd is due almost entirely to mobile sources: 87% of the CO emissions are from on-road vehicles, and an additional 9% from off-road mobile sources. Industrial fuel combustion and unplanned fires are significant in the remaining 4% of emissions.

The NO_x inventory of 1040 tpd comes primarily from on-road vehicles (59%), with the remainder fairly evenly split between off-road mobile sources, industrial fuel combustion, and residential/commercial fuel combustion.

Even with no new controls measures, VOC, NO_x, and especially CO emissions are projected to decrease by the year 2010. This is due to existing stationary source controls coming into effect, and

to the California motor vehicle control program. However, these decreases are not enough to bring the air basin into NAAQS attainment; the effects of 37% growth in population and 68% increase in VMT largely cancel the gains.

Projected future year inventories are presented in appendix III-B ("Future Baseline Emissions") of the AQMP. They are based on economic and demographic projections by SCAG, which are described in appendices III-D and IV-I ("Baseline Projection" and "Growth Management Plan", respectively). Employment projections are based on local and regional apportionments from national projections for various industries important to the region. A continuation of the current trend toward a more service-based economy is assumed. Based on this, adjustments are made to a cohort model of population, which continues current fertility and migration patterns. An explicit assumption is that there will be no infrastructure or other constraints to growth.

3. EPA Analysis of Inventories

a. *Comparison with EPA requirements.* The emission inventory in the AQMP deviates from EPA's proposed policies in a number of ways. These deviations and some mitigating factors are described below.

The AQMP reports organic compounds as reactive organic gas (ROG). The definition of ROG in appendix III-A of the AQMP is identical to EPA's definition of VOC at the time the plan was written. However, ROG in fact includes ethane as a photochemically reactive compound, while VOC does not.

While overall the difference is not large, it may be sizable for some categories, such as refineries. EPA cannot give credit toward attainment of the ozone standard for control of ethane. The AQMP should document the difference between ROG and VOC for each category.

EPA is inclined to require a 1987 or 1988 base year; the AQMP uses a 1985 base year. Major portions of the plan were prepared before the new EPA guidance documents were finalized. The plan is dated March 1989, and had to use an earlier year, since inventories using 1987 as a base year are only now becoming available.

The size cutoff for point sources proposed by EPA is 10 tons per year; sources larger than this are to be considered point sources subject to more detailed and individual reporting requirements. The AQMP used 18 tons as its cutoff. Also, the AQMP does not provide the comprehensive process

description information required by EPA for point sources. Though higher than the current EPA requirement of 10 tons, the AQMP's point source cutoff of 18 tons is much lower than the earlier EPA guidance level of 100 tons, which was in effect at the time of the plan's writing. Indeed, the AQMD is to be commended for decreasing the cutoff on its own.

In general, the inventory is complete and detailed. With some minor exceptions which remain unclear (e.g., publicly owned treatment works), the AQMP provided emissions for all point, area, and mobile source types listed in EPA guidance, and even provided data from some source types beyond those in the guidance. It is possible to divide emission sources into categories in different ways. Small categories, in particular, are often lumped together in differing ways. For example, the coating of magnet wire, which EPA guidance lists as a separate category, is included in the AQMP inventory under miscellaneous industrial coatings. The high level of desegregation in the inventory, and the level of expertise of the agencies involved, gives EPA high confidence that all relevant source categories were included in the inventory.

As noted above, ARB's EMFAC7D was used to estimate on-road vehicle emissions factors, which were then combined with vehicle activity estimates contained in draft BURDEN7B. At the time that the post-1987 motor vehicle plan was developed, the contribution of evaporative running losses to motor vehicle emissions had not yet been quantified and was not represented in EMFAC7D. Subsequent vehicle testing indicates that running losses are a substantial fraction of emissions and must be accounted for in the inventory. ARB is working on the next generation of the EMFAC model in order to update the motor vehicle emission estimates.

The AQMP makes little mention of rule effectiveness. This EPA proposed requirement has proved somewhat controversial in California, where the inventories have typically been quite good. The new rule effectiveness and some other requirements were felt to be largely aimed at the historically poor quality inventories done in some other parts of the country. Nevertheless, the plan should include at least documentation on how the important concepts in rule effectiveness were considered in the emissions estimates. The AQMP ascribes continued nonattainment in part to "measures not as effective as originally estimated" (p. 1-13, AQMP). This is an implicit

admission that rule effectiveness is important, but the plan does not explore the issue further. The plan should state which measures are meant, their actual effectiveness, and steps to be taken or already taken to improve them.

Growth factors are listed in appendix III-B for a number of controlled source categories. The method by which these factors were derived for each category from SCAG's projections is not described; nor is it explained why control categories not listed have a growth factor equal to one.

Since growth is the major impediment to attainment, as the AQMP itself states, an even more detailed description of the projection methodology is in order. Ideally the description would be exhaustive and its techniques and assumptions subject to careful scrutiny. For example, is the assumption of no constraints to growth a neutral fact, or a self-fulfilling policy decision? However, while the projection models used are open to question, EPA has no substitute. SCAG and SCAQMD appear to have done a thorough job, using a model with standard assumptions.

The most significant deviation of the AQMP's emission inventory from EPA requirements is in the area of documentation. In general, the inventory should have documentation of its methodologies, variables, and data sources sufficient for independent recalculation of the emission estimates. For point sources, EPA requires desegregation by process unit within an industry, and the listing of operating schedule, process rates, control equipment efficiency, and other data not provided in the AQMP. Similarly, for area sources, the plan does not provide emission factors, activity levels, or sources of data. For mobile sources, there is very little detail on the methodology for determining speeds and VMT.

EPA also believes additional documentation is needed to support the emission inventory. This should include:

- a. A description of the sources for which size distribution was assessed and an explanation of the methodology used to estimate PM-10 emissions from sources in which size distribution was not assessed;
- b. A description of the methodology used to develop size distribution profiles for sources in the SCAB;
- c. Sample calculations for a variety of computations, in particular the source category described as miscellaneous sources which accounts for 88% of daily PM-10 emissions and includes farming operations, construction/demolition, and entrained road dust from paved and unpaved roads.

Altogether, this lack of documentation makes the inventory essentially impossible to review. At most, those emission sources normally calculated on a per capita basis can be checked for reasonableness. Most of those categories checked have reasonable values, but there is no explanation for the unexpected ones or for those not checked. The sheer volume of the material required in such an area as large in population and industry as the SCAQMD, would make a complete review difficult given current EPA resources; still, full documentation would allow at least spot checks for quality assurance.

No quality assurance program is described in the plan, though it is required by EPA guidance. However, the ARB does conduct quality assurance on data submitted to it by the South Coast. There is a visual check, computer checks for completeness, consistency, and reasonableness, and some cross-checks with other data sources. This program should have been described in the AQMP.

b. *EPA action.* EPA proposes to defer action on the inventory in the AQMP, noting that a wholly revised inventory has already been prepared for use in a 1991 update to the AQMP. The main difficulty in the stationary source portion of the 1989 AQMP's inventory is a lack of documentation. EPA's experience with the personnel and programs at the SCAQMD and the ARB provide us with a high degree of confidence in the process used to construct the inventory. As noted previously, however, the mobile source portion of the inventory was constructed prior to the quantification of evaporative running losses and is therefore underestimated. EPA proposes to substitute for it in the Federal Implementation Plan portion of this notice.

G. EPA Action on Modeling

1. Criteria for Evaluating SIP Modeling

a. *Models preferred by EPA.* The *Guideline on Air Quality Models (Revised)* (EPA-450/2-78-027R, July 1986 & Supplement A, July 1987) provides recommendations on air quality modeling techniques that should be applied to SIP revisions. It serves to identify, for all interested parties, those techniques and data bases EPA considers acceptable. It is not intended to be a compendium of modeling techniques. Rather, it should serve as a basis by which air quality managers, supported by sound scientific judgment, have a common measure of acceptable technical analysis.

EPA has identified a number of refined models for various pollutants, source types and physical conditions. Models which are demonstrated to perform better than others in a given category are considered as preferred by EPA. No further evaluation of a preferred model is required if the user follows EPA recommendations.

b. *Other modeling techniques.* When there are no preferred models applicable to a given problem, EPA provides that an alternative refined model may be used, provided that:

(1) The model can be demonstrated to be applicable to the problem on a theoretical basis, and

(2) The data bases which are necessary to perform the analysis are available and adequate, and

(3a) Performance evaluations of the model in similar circumstances have shown that the model is not biased toward underestimates, or

(3b) After consultation with the EPA Regional Office, a second model is selected as a baseline or reference point for performance and a demonstration is made that the proposed model performs better than

2. Modeling Used in the South Coast SIP

a. *CO modeling.* The modeling for evaluating CO control strategies and demonstrating attainment of the CO NAAQS in the South Coast SIP uses a "modified rollback" approach, wherein the measured ambient concentrations are assumed to be directly proportional to the CO emissions within a five square kilometer area in the vicinity of the monitor. The highest ambient concentrations are measured at the Lynwood monitoring site in central LA County, although very high readings also occur at Hawthorne and at Lennox, which are west of Lynwood, closer to the coast. The Lennox monitoring site has been discontinued.

b. *Ozone modeling.* The model preferred by EPA for Ozone SIP modeling is the Urban Airshed Model (UAM). The most recent update to this model was used in the South Coast SIP. The model underwent rigorous model performance and sensitivity evaluations before it was used in the SIP development. The time period modeled covered a three day Ozone episode where ambient concentrations reached the design concentration of 0.36 ppm on the second and third days of the episode.

The SCAB experiences ozone concentrations exceeding the NAAQS of 0.12 ppm on more than 150 days per year. There are a number of meteorological conditions which lead to

high ozone levels. The magnitude of the peak ozone is determined primarily by the meteorological conditions during a given episode. In order to adequately assess the representativeness of a given ozone episode a Classification and Regression Tree (CART) analysis was performed to rank the ozone episodes by meteorological conditions. The selected three day episode, June 5-7, 1985, met the criteria of being representative of the meteorological conditions which produce the most severe Ozone levels in the SCAB and the peak one hour Ozone concentration was the design concentration for the SCAB.

Before the actual modeling analysis was undertaken, a modeling protocol was established, in consultation with the EPA, the ARB and with various experts in the field of photochemical modeling. Included in the protocol were the expected performance goals and criteria that would be used to judge the model's capabilities before it was used in SIP development.

The UAM is a complex mathematical synthesis of the physics and chemistry of the atmosphere that lead up to urban Ozone formation. An important consideration in using the UAM in SIP development is minimizing the effect of uncertain model parameters, such as the boundary and initial conditions of the model, on the predicted ambient concentrations and to ensure that the predicted ambient concentrations will respond to changes in precursor emissions. At the same time, the model's performance in predicting ambient Ozone concentrations must also be maintained. The modeling domain was extended to a "clean air" boundary over the ocean to minimize the impact of the boundary conditions on the predicted ambient concentrations. This becomes most important in simulating high emission control scenarios, since the boundary conditions have relatively more impact when the emissions are drastically reduced. A three-day simulation was run to minimize the effect of the initial conditions on the predicted ambient concentrations on the second and third days of the simulation.

The mobile source emissions included in the early model simulations were calculated based on constant ambient temperatures throughout the basin for specific time periods. Mobile emissions do, however, vary considerably with ambient temperature and the temperatures vary considerably throughout the basin at any given time. To correct for this simplification in the mobile emissions, they were recalculated using the UAM gridded temperature fields to calculate spatially

and temporally varying mobile emission fields, for each hour of the simulation. At the time the modeling was being performed, however, it was discovered that evaporative emissions from vehicles while they were running were a significant, but overlooked, source of VOC emissions throughout the country. Reliable emission estimates of running evaporative losses were not available at the time the Ozone modeling analysis was being conducted for the SIP and were, therefore, not included in the modeling. The net result of the more accurate temperature distribution was that VOC, and CO emissions from mobile sources were all increased.

The initial model performance evaluation was based on the constant temperature mobile source emissions. With the new emissions, the model's ability to predict the maximum Ozone concentration was not significantly altered, but the Ozone concentrations in the mid-basin region, around Pasadena, were under-predicted. Overall, the model met the performance goals established in the modeling protocol.

After the model was thoroughly evaluated and deemed suitable for use in SIP analysis, it was exercised to evaluate the relative needs for VOC or NO_x controls and for evaluating the relative effectiveness of the control measures identified in the SIP. The conventional approach to reducing Ozone concentrations is to apply VOC controls rather than NO_x controls. The model was used to evaluate the feasibility of this conventional approach. It was found that when population and economic growth were taken into account, if all available VOC-only emission controls (controls which would affect VOC emissions with no impact on NO_x) were applied, the Ozone NAAQS could not be reached. The modeling analysis indicated that significant NO_x reductions would be required as well.

Ultimately the model was used to evaluate the entire array of emission control measures identified in the SIP, with respect to their impact on ambient Ozone levels. The modeling results indicate that if total ROG emissions (including methanol) are reduced by 86% and total NO_x emissions are reduced by 82% that the peak one hour Ozone concentration can be reduced from 0.36 ppm to 0.126 ppm.

3. Proposed Action on the Modeling Analyses

a. *CO modeling.* EPA guidance on the use of rollback techniques for CO analysis is:

If results from screening techniques or measured carbon monoxide levels in an urban area are clearly well below the standards and expected to remain below the standard, or it can be demonstrated that the Federal Motor Vehicle Control Program will provide the needed CO reductions, then urban area-wide strategies may be evaluated using a modified rollback or proportional model approach.

The preferred method for analyzing CO impacts is to use a line source model (CALINE3) to evaluate the impacts from nearby roadways and an area wide model to evaluate elevated "background" levels of CO.

Data analysis indicates that during worst case CO episodes, a wide-spread build-up of CO occurs in the central LA county area, initiated by the evening peak mobile emissions throughout the area. High ambient concentrations remain throughout the night and are subsequently enhanced by morning peak emissions, leading to a second peak in CO concentrations in the morning. The ambient concentrations remain above 20 ppm throughout this time period. This implies that area-wide modeling techniques are most appropriate for SCAB.

As generally applied, a rollback analysis is a crude area-wide modeling technique. It is most applicable when the distribution of emissions is not expected to radically change and when there is adequate area-wide coverage by the monitoring network so that the maximum concentrations are likely to be measured. In the case of the South Coast Air Basin, there is a relatively extensive monitoring network. The emissions distribution, however, is expected to change dramatically between the base year conditions and the time when attainment might be achieved. The "modified rollback" used by SCAQMD attempted to account for that by using spatially gridded future year projections. The problem with this, however, is that the projections in any given 5 square kilometer grid cell are highly uncertain, and since only the grid cell in which the existing monitor was located was used in the rollback, the rollback concentration will also be highly uncertain. Also, since the data analysis indicates that extremely high levels of CO are an area-wide problem, the rollback of concentrations in proportion to the emissions in only one cell, as conducted by the AQMD, is inappropriate. If a rollback analysis is to be used at all, it should be based on the total emissions in a larger geographical area of influence.

EPA concludes that the modified rollback analysis, as employed in the

SCAB SIP, is not likely to accurately represent the changes in ambient CO levels due to changes in CO emissions. Therefore, the EPA finds the CO analysis inadequate for demonstrating attainment or for evaluating the relative merits of different control strategies. EPA proposes to defer action on the CO modeling analysis. See also the discussion of CO modeling in section VII.

b. *Ozone modeling.* The AQMD used the preferred model for evaluating Ozone SIPs. They used the model to indicate the level of emission reductions necessary to achieve the Ozone standards in the SCAB. It should be noted that the analysis showed Ozone concentrations only reaching 0.126 ppm, which is still technically above the level of the NAAQS. With precursor emissions reduced by more than 80%, the model becomes somewhat more sensitive to the boundary conditions. Also, the future year projections of the boundary conditions, as well as the rest of the model inputs, are very uncertain.

In conclusion, it should be noted that while EPA recommends the UAM as the preferred model for Ozone SIPs, it has not established guidance on how to interpret the model results or how to use the model to demonstrate attainment. EPA finds the UAM analysis, conducted by the SCAQMD, to be an excellent example of how to apply the model to a SIP, for both an attainment demonstration and for evaluating the relative merits of control strategies. While the modeling analysis meets and exceeds EPA's technical criteria for ozone SIP modeling, EPA proposes to defer action on the modeling analysis, in light of the proposed disapproval of the attainment demonstration.

H. RFP Tracking.

Section 172(b)(3) of the CAA requires "reasonable further progress" (RFP), defined as annual incremental reductions in emissions sufficient to provide for attainment. EPA has published guidance on the required contents of annual RFP reports: They should show numerically and graphically the emission reductions achieved over the preceding year, together with any shortfall and steps taken to correct it. Air quality data is also to be reported. EPA continues to stress the need for aggressive tracking.

SCAQMD has committed to an annual workplan for implementing control measures, and to an annual auditing report to monitor implementation progress. The AQMP gives a general implementation timeline for its three-tier control strategy. In addition, a Monitoring Working Group has been

established with the participation of SCAG, ARB, and EPA, to prepare a monitoring handbook for use in the preparation of annual RFP reports.

I. EPA Action on Resources

The State has indicated that adequate resources presently exist for adoption and effective implementation of all control measures in the SIP except for the following: Urban Bus System Electrification, G-1; Clean Fuel Retrofit of Transit Buses, G-2; Vanpool Vehicle Purchase Incentives, SCAG #2.c; High Occupancy Vehicle Facilities, SCAG #2.f; Transit Improvements, SCAG 2.g; Rail Consolidation to Reduce Grade Crossings, SCAG #11; Paved Roads, SCAG #12.a; Unpaved Roads and Parking Lots, SCAG #12.b; Freeway and Capacity Enhancements, SCAG #13; High Speed Rail, SCAG #16; Energy Pricing, Tax and Subsidy Incentives, SCAG #18.c. In each case, ARB has submitted a commitment to seek required funding. In addition, the State has indicated that measure D-2, Out-of-Basin Transportation of Biodegradable Solid Waste, lacks needed resources. For this measure, the State has merely committed to further study. For the following three measures, which the State has identified as lacking resource commitments, the State has submitted a commitment to seek implementation by the responsible entities: Diverting Port-related Truck Traffic to Rail, SCAG #3.b; Traffic Flow Improvements, SCAG #4; Non-recurrent Congestion Relief, SCAG #5. EPA proposed to approve the resources portion of the SIP along with the commitment of the State to obtain additional resources.

J. EPA Action on Contingency Plan

As discussed in IV.D.10. above, the AQMP includes eight contingency measures, all of which relate to reductions in motor vehicle emissions. The AQMP does not clearly indicate when the measures might be imposed. In addition, the AQMP's Conformity Procedures describe transportation mitigation measures that may be taken if necessary. EPA has requested more specific information from the State responding to the two elements in EPA's policy on transportation contingency plans:

(1) A listing of transportation measures and projects with potentially adverse air quality impacts, which implementing agencies have agreed can be delayed during an interim period while the SIP is revised, in the event EPA determines that RFP is not being met; and

(2) A description of a process for determining additional transportation

measures beneficial to air quality that can be implemented or accelerated to compensate for unanticipated shortfalls in emission reductions.

EPA proposes to defer action on this provision to allow the State to submit additional information clarifying the contingency process and providing either a list of planned transportation measures and projects that may be adverse or adequately justifying a finding that there are no such measures and projects. If this supplement is not submitted by the time of final FIP promulgation, EPA may propose additional FIP measures to address this requirement.

K. EPA Action on New Source Review

On January 21, 1981 (46 FR 5965), EPA conditionally approved the SCAQMD NSR rule (see 40 CFR 52.232(a)(3)(i)). Revised NSR rules were submitted to EPA on November 8, 1982 and February 3, 1983. EPA proposed action on the amended rules in October 1983 (48 FR 49522). Since that time, the NSR rule has undergone an almost continuous process of substantive revision by the SCAQMD, and a significantly revised NSR rule was adopted by the SCAQMD Board on June 28, 1990. Further major revisions may occur in the future (see proposed measure, New Source Review, F-8, in section V.D.4., above). Upon State submittal of the revised rule, EPA will undertake separate rulemaking action. If the new NSR rule is deficient, EPA intends to evaluate the remaining NSR issues and promulgate as part of the FIP a rule meeting federal requirements, if necessary. Even though the SCAQMD NSR rule may satisfy or exceed all of the minimum national NSR requirements (codified at 40 CFR 51.165), EPA will monitor emissions changes and may determine in the future to promulgate additional provisions to ensure that growth from new major and minor sources would not interfere with emissions reduction progress required under the FIP.

It should be noted, however, that the ozone and CO construction bans under section 110(a)(2)(I) were imposed in 1988 upon disapproval of the SIP, and EPA proposes to retain this disapproval and the construction ban affecting major new or modified services of CO or VOC.

L. EPA Action on Maintenance Provisions

This provision is not satisfied because the SIP fails to address attainment. Furthermore, the SIP submittal does not address EPA's current policy by inclusion of a maintenance plan or EPA's proposed policy by a qualitative

demonstration and a commitment to submit a maintenance plan in the future (see section IV.A.3.h).

M. EPA Action on Analysis of Plan Effects & Alternatives

The SIP submittal included, as documentation of satisfaction of this requirement, an Environmental Impact Report, identifying and analyzing air quality, health, welfare, economic, energy, and social effects of the plan, and summarizing and responding to public comments on the analysis. A description of an extensive process of public involvement and consultation was also included with the SIP submittal. EPA proposes that this Clean Air Act requirement has been satisfied fully.

N. EPA Action on Adoption, Consultation & Public Notification

As discussed above, adoption of the plan by the three responsible agencies followed more than adequate provisions for public notice, consultation, and public hearing. The AQMD program, procedures, and requirements for public notification continue to meet the requirements of section 127 of the Act, as well as EPA regulations respecting daily Pollution Standards Index reports and annual air quality summary reports.

VI. Sanctions

A. Construction Ban

EPA's disapproval of the ozone and CO attainment demonstrations in the 1989 South Coast AQMP would result in continuation of the ozone and CO construction ban under section 110(a)(2)(I). This ban has been enforced in the SCAB since August 31, 1988.

B. Reasonable Efforts Determination

Where EPA determines that a State is not making "reasonable efforts" to submit an approvable Part D SIP, section 176(a) provides for the imposition of federal highway and air pollution grant funding limitations. EPA does not propose at this stage to impose these restrictions in the South Coast. EPA's present intention is not to begin any proceeding under section 176(a) for so long as the State is successfully developing, adopting, submitting, and implementing the AQMP's controls in order to maintain emissions reduction progress. EPA regards adherence to the AQMP's ambitious emission reduction schedule as constituting "reasonable efforts", particularly in conjunction with the State's on-going program to update and revise the SIP in 1991.

VII. SOUTH COAST FEDERAL IMPLEMENTATION PLAN

A. Introduction

1. Today's FIP Proposal

EPA today proposes a Federal Implementation Plan for the South Coast Air Basin in order to provide completely for attainment of the National Ambient Air Quality Standards for ozone and carbon monoxide. Further details on the legal basis for the FIP may be found in the ANPRM published on December 7, 1988 (53 FR 49494) and in section II.B. of this notice. Although a portion of the legal basis for the FIP proposal is set forth in preceding sections on the revised South Coast SIP, this section VII fully describes the proposed South Coast FIP action.

2. Goals of the Plan

Beyond the legal requirements of the CAA, and as required by case law, there are important goals to which EPA strives in today's proposal. The goals of the FIP are to:

- Fulfill all legal responsibilities to the court according to the stipulated agreement;

- Conform as closely as possible with the Administration's Clean Air Initiative as amended by Congress;

- Support local, regional and state efforts such as the South Coast AQMP and ARB's consumer products and mobile source control programs;

- Avoid conflict with, or duplication of, the efforts of ARB, SCAQMD and SCAG;

- Minimize federal intrusion in local and state governmental actions;

- Minimize socio-economic dislocation;

- Select the most cost-effective measures and regulatory approaches;

- Encourage market-based incentives.

3. Overview of the FIP

The proposed FIP would establish long term attainment deadlines—20 years for ozone and, proposed in the alternative, 10 or 14 years for CO. The rationale for EPA's chosen attainment dates appears below in section VII.A.5.

The FIP would over time take credit for those SIP control measures that have been adopted as legally enforceable regulations and submitted as approvable elements of the SIP. For the first five years, the FIP would promulgate core measures specific to the South Coast and national core measure (a cold CO standard and evaporative controls for gasoline-fueled motor vehicles).

EPA proposes to achieve the remaining required emissions reductions through two alternative approaches to the FIP. FIP Option I (a "Regulatory

FIP") includes "backstop" measures in addition to the core measures. The "backstop" measures would ensure achievement of the FIP's Reasonable Further Progress (RFP) schedule for VOC reductions and would, together with other FIP and enforceable State measures achieve attainment of the ozone standard. (EPA's commitment to add additional FIP rules to make up a small VOC reduction shortfall if growth projections prove accurate is discussed below in VII.A.5.) The "backstops" would be rescinded or their requirements lessened if State and local efforts suffice.

FIP Option II (a "Committal FIP") would consist substantially of legally binding commitments to achieve specific emission reduction goals for various source categories in future years as an addition to the core measures. The two options are described more fully in sections VII.A.4. (which discusses the legal issues associated with the two options), VII.C.1 (the Regulatory FIP), and VII.H.1 (the Committal FIP).

As discussed above in section V.D.3., EPA is providing credit for emission reductions from the State's existing motor vehicle control plan. As EPA approves additional State and local SIP regulations in the future, appropriate emission reductions will be assigned and credited toward Reasonable Further Progress. In this way, State and local revisions to the SIP will allow EPA to defer, restrict, or withdraw "backstop" measure implementation. Because the "backstop" measures have the potential to be both onerous and intrusive especially in the later years of this plan, EPA strongly encourages the State to adopt measures quickly that will reflect the latest available technologies and approaches that utilize marketplace incentives.

Under both FIP options, EPA is proposing the following core measures:

- (a) Wintertime oxygenated fuels program;

- (b) Gasoline volatility restriction during the ozone season (April through October);

- (c) Wintertime gasoline volatility restriction for CO;

- (d) Reformulated gasoline requirements;

- (e) A cold CO emission standard for light-duty cars and trucks, which will be proposed nationally in the near future;

- (f) Enhanced evaporative emission controls for gasoline-fueled motor vehicles, which were proposed nationally in January 1990; and

- (g) Controls on marine vessel tanks. Each of these measures is discussed in detail in section VII.B. below.

Under the Regulatory FIP option, EPA is proposing a variety of controls that dramatically reduce emissions from most mobile, area, and stationary sources of emissions, beginning in 1996 or 1997 (see sections VII.D., E., F., and G.). One of these backstop measures is an ultra clean motor vehicle backstop program, with a .20 grams per mile (gpm) composite in-use standard for VOC and a 3.4 gpm in use standard for CO.

During EPA's preparation of the FIP, the Agency attempted to examine every possible control measure. Section VII.B.7. lists some of the measures evaluated but not included in the initial FIP proposal. While EPA has not eliminated any of the measures from consideration for eventual inclusion in the FIP, at the time of FIP proposal EPA was unable to include these measures for a variety of reasons. Some of the reasons for non-inclusion are: Unresolved concerns regarding whether the measure would be implementable as a practical matter or would cause unacceptably harsh impacts; issues surrounding federal enforceability; considerations of public safety; questions involving the adequacy of EPA's authority and resources to implement and enforce the measure without jeopardizing other statutory responsibilities; concerns that the measure not interfere with state and local plan implementation; and uncertainties regarding adverse air quality impacts (e.g., where the proposed control might decrease VOC emissions but increase NO_x emissions).

Section VII.B.7. also includes a discussion of some measures which EPA could not propose as part of this package because of ongoing Agency evaluations which must be completed before rule proposal. EPA invites public comment on several possible regulatory approaches for this group of measures, which includes pesticides, and consumer products. Upon completion of the control measure analysis, EPA may substitute these measures for certain of the FIP's backstop controls.

EPA has attempted to mitigate the potential for adverse economic consequences in the FIP by using, wherever possible, market-based approaches, to allow the maximum feasible compliance flexibility. EPA hopes that this approach will foster technological change and innovation, and further emission reductions through the incentives of marketable emission reduction credits. In addition, by affording emission sources the opportunity to meet emission reduction requirements from any enforceable reduction method, the FIP is fully

compatible with least-cost compliance goals.

Thus, for example, the ultra clean motor vehicle backstop program employs a composite in-use standard that gives automobile manufacturers a choice over the combination of vehicle emission controls that will be applied. Additionally, the manufacturers are allowed the flexibility of averaging, banking, and trading so that they may select a different composite in-use limit for each vehicle family. With respect to backstop control measures, EPA proposes to allow sources broad latitude to devise their own compliance approach so long as total emissions from within the facility, the product, or the product line (as appropriate) meet the scheduled reduction target. See section VII.A.7 and the discussions of the FIP measures for further details on EPA's market-based compliance emphasis.

EPA's proposed FIP for ozone and CO is largely based on the State's recent draft baseyear inventory for calendar year 1987 and the State's projected inventories for 2000 and 2010 contained in the 1989 AQMP. In the case of ozone, EPA is relying on the urban airshed modeling approach used in the 1989 AQMP. The June 1985 design concentration in that analysis is 36.0 ppm—exactly three times the NAAQS. The FIP CO attainment demonstration initially employs a modified rollback approach to reduce the "highest second high" 8-hour average concentration from 23.4 ppm (recorded in 1988) to the 9 ppm NAAQS. Section VII.I.1. provides additional detail on the technical foundation of the proposed FIP.

After identifying a "carrying capacity" for the SCAB (i.e., the areawide emissions level that would allow for attainment of the standards), EPA interpolated areawide VOC levels for every third year from 1996 to 2010 to produce a linear reduction in emissions levels through the attainment date. The resulting RFP schedule amounts to roughly a 4 percent per year reduction in baseyear emissions. To enforce this reduction rate, EPA is proposing to promulgate areawide limits on actual VOC emissions (measured as tons of VOC per average summer weekday). If at any time EPA's tracking of the area's actual emissions indicates that the FRP limit will be exceeded, EPA will implement the stationary and area source "backstop" measures to the degree necessary to eliminate the excess emissions. A more complete discussion of EPA's approach to enforcing the RFP requirement may be found in section VII.I.

Supplements to the FIP may be proposed following publication of the NPR. These supplements would deal with such topics as VOC RACT deficiencies (if the State fails in its commitment to correct specified defects over the next several months), the national cold CO emission standard for motor vehicles, and additional emissions trading and alternative compliance features for the FIP regulations.

4. Proposal in the Alternative of Two FIP Options

The air quality in the South Coast is so poor that, even as EPA allows a twenty year period for attaining the ozone standard, and ten to fourteen years for CO, the Agency still must impose very stringent measures to attain these standards. To meet the challenge of attainment in the South Coast, EPA is proposing two quite different approaches, and soliciting comment on each. These approaches differ principally in the initial regulatory completeness of their measures. One approach—the so-called Regulatory FIP—promulgates full regulatory measures up front, including both core measures and "backstop" measures. Nearly all of the necessary emission reductions are achieved by specific regulatory measures scheduled to go into effect unless EPA promulgates or approves substitute measures before the specific measures take effect.

The other FIP option—the so-called Committal FIP—provides core measures and enforceable commitments to complete measures at later, specified dates. Instead of containing emissions limitations per se, the committal FIP consists substantially of commitments to develop such limitations. Both approaches must be justified under the standards for implementation plans set forth in the current Clean Air Act and applicable case law.

The Clean Air Act provides that implementation plans shall include "emission limitations, schedules * * * and such other measures as may be necessary to insure attainment and maintenance * * *" of the national ambient air quality standards by the dates specified. Sec. 110(a)(2)(B). See also *Kennecott Copper Corp. v. Train*, 526 F.2d 1149 (9th Cir. 1975), cert. denied, 425 U.S. 935 (1976) (plans must rely on emission limitations to the maximum extent feasible). In addition, plans for areas (such as SCAB) that have received extensions of the statutory date for attaining compliance with the national air quality standards are required to contain "enforceable

measures to assure attainment of the applicable standard" by 1987 (section 172(c)). As described below, these provisions are susceptible to more than one interpretation.

a. *Option 1: The Regulatory FIP.* The more conventional of the two approaches is the so-called Regulatory FIP. Under this option, EPA would guarantee a constant rate of areawide emission reductions, by promulgating a full panoply of regulations up front and in advance. If the State program fails to adopt enough approvable measures to make the requisite progress, "backstop" regulations are in place that could automatically go into effect to achieve the target emission reductions. Should the state or approved local regulations prove sufficient to achieve the needed reductions, the backstop measures can be rescinded before they go into effect.

Because these "backstop" measures are promulgated in advance of their effective dates, in regulatory form, they clearly comport with the Clean Air Act's requirements under Section 110. But, precisely because they must be specified in advance, they do not allow for further study and development that might result in quite different and less drastic measures—except that they are constructed so as to allow the maximum flexibility to industry, consumers and the economy.

b. *Option 2: The Committal FIP.* The proposed alternative to mitigate the stringency of the backstop approach is to promulgate a so-called "Committal FIP." The Committal FIP is a plan that consists in substantial part of enforceable EPA promises to promulgate additional measures to achieve further emissions reductions by specified dates in the future. In the Clean Air Act, Congress did not directly address the precise question of EPA's authority to promulgate committal SIPs or FIPs. Nor has any court addressed this precise issue under the circumstances presented here. As one court observed, "the statutory language gives at best uncertain guidance as to precisely what is required." *City of Seabrook v. EPA*, 659 F.2d 1349, 1356 (5th Cir. 1981), cert. denied, 459 U.S. 822 (1982). The Second Circuit agreed:

The need for flexibility in the administration of a statute whose provisions have been described as "virtually swim[ming] before one's eyes," . . . should not be underestimated. We have in the past been careful to defer to EPA's choice of methods to carry out its "difficult and complex job" as long as that choice is reasonable and consistent with the Act. *Connecticut Fund for the Environment, Inc. v. EPA*, 672 F.2d 998, 1006 (2d Cir.), cert. denied, 459 U.S. 1035 (1982).

On one hand, a "committal FIP" may be viewed as legally questionable on the grounds that it does not consist of enforceable measures—in the form, say, of emissions limitations—providing for the attainment of the national ambient air quality standards as required by the statute. See *Union Electric Co. v. EPA*, 427 U.S. 246 (1976). See also *City of Santa Rosa v. U.S.E.P.A.*, 534 F.2d 150 (9th Cir. 1976) (stating in the context of the gas-rationing FIP that EPA promulgated for Los Angeles in the mid-1970's that "at this stage, economic and social disruption are no longer cognizable factors").

On the other hand, in a number of cases, courts of appeals in some circuits, including the Ninth Circuit, have upheld approval of plans that included commitments to fill gaps. *Kamp v. Hernandez*, 752 F.2d 1444, 145 (9th Cir. 1985); *Connecticut Fund for the Environment v. EPA*, 672 F.2d 998 (2d Cir.), cert. denied, 459 U.S. 1035 (1982); *City of Santa Rosa v. U.S.E.P.A.*, 534 F.2d 150 (9th Cir. 1976); *Friends of the Earth v. EPA*, 499 F.2d 118, 124 (2d Cir. 1974); *South Terminal Corp. v. EPA*, 504 F.2d 646, 675-76 (1st Cir. 1974). See also *City of Seabrook v. EPA*, 659 F.2d 1349 (5th Cir. 1981), cert. denied, 459 U.S. 822 (1982) (upholding EPA's conditional approval policy for state plan in substantial compliance with part D).

The above cases can be read as providing support for plans consisting in part of commitments to take further action in the future, although they involved less significant gaps and shorter time periods than those that would be involved in the present situation. But at least one court in the past has found that the adoption of a general strategy for attainment for a portion of a SIP was sufficient to satisfy the statutory requirements. In the early 1970's, the State of New York adopted a parking policy as its SIP's primary strategy for reducing passenger car vehicle miles traveled (VMT) by fifty percent in the Manhattan business district. The plan stated in only very general terms that available parking spaces should be reduced by 30 to 40 percent, without specifying which on or off-street parking facilities would be eliminated. Citizens' groups challenged the plan, arguing that it was "too vague because the strategies, do not indicate precisely what actions will be taken." In addition, the challengers claimed that the plan did not comply with section 110(a)(2)(B)'s requirement of "emission limitations, schedules, and timetables for compliance." *Friends of the Earth v. EPA*, 499 F.2d 1118, 1124 (2d Cir. 1974). The Second Circuit held that the Administrator could approve the SIP

and allow the State to postpone submission of implementing details, as long as the overall strategy was chosen and firm commitments made to put them into effect:

While New York's plan does not commit itself to banning parking on any particular street, the EPA or a private citizen could in an appropriate enforcement action require New York to implement a ban reducing business district parking by thirty to forty percent. So long as the plan is detailed enough that the Administrator can determine that the proposed strategies will achieve national air quality standards and there is no reason to believe that the delay in promulgating detailed regulations would interfere with the requirement that such standards be achieved "as expeditiously as practicable" . . . we see no good reason not to allow a State some additional time to submit more specific details of their implementation plan.

But in the most recent case, the U.S. Court of Appeals for the Ninth Circuit stated that it could uphold a SIP consisting in part of commitments to take future action only if (1) it were unfeasible to resolve the problem through emission limitations; (2) the plan were substantially complete and the state was committed to promptly completing it; and (3) approval would not circumvent any of the substantive requirements of the statute, such as delaying attainment of the national air quality standards. *Kamp v. Hernandez*, 752 F.2d 1444, 1455 (9th Cir. 1985).

Conceivably, a committal FIP for the SCAB meets the *Kamp* tests. First, promulgating a full complement of emissions limitations at this time could be unfeasible. A full complement might be either counter-productive in that it would freeze the plan prematurely by forcing polluting sources onto a control track that may later prove unwise, not enforceable, or impossible to promulgate at this time (e.g., measures to control emissions from consumer products).

Second, one might argue that it would be inappropriate to measure the requirements for a long-term attainment FIP for the South Coast by the same standard of completeness applied in prior situations. The Ninth Circuit has not addressed such as extreme case—a post-1987 FIP with a long-term attainment date, for an area with the most intractable ozone problem in the Nation, requiring a massive plan stretching over a long period of time. Logically, a twenty-year FIP simply cannot be as complete as a FIP for shorter time periods. Thus, arguably the only sensible approach would be to draft a general strategy with enforceable commitments to supply implementing details at appropriate interim dates.

Third, one could point out that a committal FIP would not delay timely attainment since citizen enforcement of EPA commitments will ensure fulfillment of Agency promises.

In short, the case before us is one of first impression. The South Coast presents the worst case scenario of air pollution; despite the most ambitious air pollution control program in the nation, it remains subject to the worst ozone problem. EPA has already determined that the area requires an unprecedented twenty-year attainment period in order to leave room for the technological and socio-economic changes required to attain the air quality standards. A general strategy to achieve these changes, coupled with enforceable commitments, might be found to meet the *Kamp* test and to reflect a reasonable accommodation with the purposes of the statutory requirements in this extreme case, and hence might be held permissible under the statute. *Chevron v. NRDC*, 467 U.S. 837 (1984).

Because it is unclear whether a committal FIP for the SCAB would be consistent with the statute, and because the nature of the South Coast's air problems calls on us to stretch the limits of our abilities in seeking a solution, EPA has determined to propose both a regulatory FIP and a committal FIP, in the alternative. This will permit a full exploration of the relative advantages and drawbacks of each approach.

5. Attainment Dates

The deadline in the current Clean Air Act for a SIP—and, by analogy, a FIP—to project attainment (December 31, 1987) has passed, and Congress has not yet extended it. Thus, in its Advance Notice of Proposed Rulemaking for the South Coast CO and ozone FIPs, 52 FR 49494 et seq. (December 7, 1988), EPA suggested three possible interpretations of the deadline for attainment, and solicited comments on those interpretations.

a. *The ANPRM and comments.* The first two interpretations—immediate attainment, and attainment within five years—raised serious questions of enforceability and potential conflict with other statutes. EPA stated that "as a practical matter, immediate attainment is impossible and a five-year plan would impose requirements so draconian as to re-make life in the South Coast Air Basin." 53 FR 49495. (See extended discussion of these options at 53 FR 49508-49511). The comments received in response to the ANPRM were unanimous in urging EPA to reject these two interpretations.

As for the immediate attainment interpretation, in addition to the defects

pointed out in the ANPRM, commenters noted that in legislative history associated with Clean Air Act appropriations legislation in 1983 and 1987, Congress took pains to avoid imposition of sanctions in areas which had not attained national ambient air quality standards by the end of 1982 and 1987. They asserted further that in 1983, Congress prohibited EPA from imposing construction bans on areas that had failed to meet the deadline for attaining the air quality standards. Public Law 98-45, 97 Stat. 226. Commentors contended that the Mitchell-Conte Amendment to the Budget Reconciliation Act of 1987, Public Law 100-202 (Dec. 22, 1987) did not call this conclusion into question.

Commentors also observed that since the Clean Air Act was amended in 1977 and its Part D attainment dates have already passed, the pre-1977 decisions in *Bethlehem Steel Corp. v. Train*, 544 F.2d 657, 661 (3rd Cir. 1976), and *City of Santa Rosa v. EPA*, 534 F.2d at 150, 154, cited in the ANPRM, do not constrain EPA today. Commentors found the five-year attainment date interpretation, "even less defensible legally than an immediate attainment approach." In addition, they argued that the case for the five-year attainment deadline rests entirely on a fragile analogy. Although Section 110 serves as a guide to general Congressional intent, commentors argued that the three-to-five year timetable in that section ought not to determine EPA's resolution of the attainment deadline issue.

Other commenters observed that where EPA is responding to a state failure to comply with a section 110(a)(2)(H) SIP call, the case for a three-to-five year deadline is not conclusive, and the agency's decision to adopt it was influenced by policy arguments and analogies to other provisions of the Clean Air Act. Where, as in Los Angeles, EPA never approved the SIP, it is not acting under section 110(a)(2)(H), but is instead completing a missing Part D SIP. The legal justification for the three-to-five-year deadline in these circumstances is even less compelling. Another objection raised is that EPA would usurp Congressional authority far more by imposing drastic control measures than by simply continuing to require reasonable further progress. Most importantly, the commentors argued that a three-to-five year attainment deadline for severe non-attainment areas such as the South Coast still creates the dilemma that attainment would be impossible even with the most draconian measures.

EPA found these and the other objections to the first two

interpretations persuasive, and was ready to conclude that the third interpretation—a longer term attainment date—offers the only satisfactory resolution of the competing interests that must be reconciled under the Clean Air Act. EPA's third proposed interpretation of the deadline was one that would require attainment "as expeditiously as practicable" (section 110(a)), by a fixed date, without requiring severe economic disruption. The legislative history of the Clean Air Act reflects deep concern with the need to balance progress towards clean air with avoidance of severe economic disruption. The principal appeal of the longer-term FIP approach is that it provides the best—indeed only—means of reconciling the twin but conflicting policies embodied in the statute. It would allow EPA to develop a plan that provides for progress in air quality but does not defeat itself with unworkable or preposterously severe requirements.

In applying this interpretation to the South Coast, EPA was prepared to propose a twenty-year attainment date for ozone, and a similar long term attainment date for carbon monoxide. The attainment deadlines also comported with both the Administration's proposed Clean Air Act Amendments and the judgment of SCAQMD, SCAG and ARB.

Virtually all of the comments received on the ANPRM supported the adoption of this third interpretation. As one commentor noted:

a longer-term FIP attainment date is consistent with the legislative history of the Act that reflects a concern with the need to balance progress towards clean air with avoidance of severe economic disruption * * *. In addition, sections 110(a)(2), 172(b) and 173 of the Act contemplate ongoing socio-economic activity consistent with a reasonable and acceptable program to meet the goals of the Act. As a practical matter, a longer-term attainment deadline is necessary to prevent promulgation of harsh regulations that, if imposed, would tear the socio-economic fabric in the SCAB. [Comments of Southern California Edison Company, page 2. Footnotes omitted.]

For the reasons discussed in the following sub-section (on the *Delaney* decision), in this proposal, EPA will follow a modified version of the third interpretation, one that would require attainment as soon as possible, by a fixed date, without requiring absurd, impossible, or unenforceable measures.

b. *Impact of Delaney v. EPA.* On March 1, 1990, the Ninth Circuit issued its opinion in *Delaney v. EPA*, No. 88-7368, vacating EPA's approval of two Arizona carbon monoxide SIPs, and ordering EPA to promulgate federal

implementation plans consistent with that court's opinion. Interpreting EPA's statutory requirement to develop a FIP in light of the passage of the statutory attainment date of December 31, 1987, the Court concluded that "the national ambient air quality standards must be attained as soon as possible with every available control measure, including those that the EPA identified in its criteria for approving 1982 plans." Slip Opinion at 2270.

In arriving at this conclusion, the Ninth Circuit relied heavily on guidance that EPA itself had issued in 1981 regarding planning to attain the ozone and carbon monoxide standards. The Court cited in particular a passage from the 1981 guidance stating that the plans for certain areas having difficulty attaining by 1987 "must demonstrate that all possible measures will be implemented * * *." Slip op. at 2269 (quoting 46 FR at 7183).

In another part of the opinion concerning reasonably available control measures, the Court acknowledged an EPA guidance document providing that a control measure would be deemed not reasonably available if it would not advance attainment, would cause substantial widespread and long-term adverse impact, or would take too long to implement.

Although the meaning of the language in *Delaney*, as applied to the situation in Los Angeles, is not entirely clear, EPA believes that the FIP it is proposing today complies with the standard set by that case, as it is currently understood by EPA. In a Petition for Rehearing, filed with the Ninth Circuit on March 27, 1990, EPA advised the Court that it does not read the opinion as requiring it to implement any measures that either (1) Would not advance the attainment date; (2) are not within the power of the federal government to implement; or (3) are not "available" in the sense that they would result in absurdly severe economic and social disruptions, e.g., gasoline rationing. The following sections c. and d. discuss the implications of the *Delaney* decision.

c. *Attainment of the standard "as soon as possible"*. As noted above, the South Coast has the worst ozone levels in the country, and arguably the worst CO levels of any urbanized area. To attain the ozone standard, EPA must reduce VOC by 86 percent. Attainment of the CO standard requires 60 percent reductions in CO, mostly from mobile sources.

Under the *Delaney* court's formulation, the standards "must be attained as soon as possible, with every available control measure." EPA believes that twenty-year attainment

date for ozone, and a 10- or 14-year attainment date for CO, constitutes attainment as soon as possible with respect to these standards. Similarly, the SCAQMD and ARB have concluded that twenty years is the earliest date by which ozone attainment can be reached.

All the commenters on the ANPRM, from both industry and environmental groups, agreed that, to attain the ozone standard in the South Coast, without bringing life there as we know it to a halt, we must allow a long term attainment period. Because of the enormous reductions and drastic controls required, even stretching the attainment period over twenty years, the FIP could create devastating impacts on the country's largest industrial area. Regulations to be included in the proposed FIP require severe across-the-board reductions from every pollution source, many of which have never before been regulated. As EPA is proposing to interpret *Delaney*, the goal of EPA's FIP is to reach attainment as soon as possible, but without employing measures that lead to absurd results, impossibilities, and conflicts between statutory provisions.

One could, of course, argue that the *Delaney* court intended attainment "as soon as possible" to require immediate attainment. In the ANPRM, EPA explored the immediate attainment option in some depth, and rejected this interpretation. Some of the objections raised there remain relevant in determining here whether the *Delaney* court's opinion requires immediate or short-term attainment in the context of the South Coast ozone and CO problem. In the ANPRM, EPA discussed the judicial doctrines that seek to avoid absurd results, impossibilities, and conflicts between statutory provisions. See 53 FR 49509. A FIP whose goal was instant attainment would have to ban immediately the operation in the SCAB or nearly every fossil-fueled vehicle, prohibit almost all industrial and commercial VOC emissions, curtail drastically most agricultural activities producing VOC emissions, and ban many consumer products containing reactive solvents. Such a plan would shut down nearly all business activity, halt traffic, and dramatically restrict all aspects of social life. Implementing and enforcing such drastic measures would, stated simply, be impossible, and could prevent satisfaction of the basic necessities of life—including food, shelter, and medical services.

In addition, the disruptive consequences and enforcement difficulties of immediate FIP prohibitions would be far more extreme than FIP measures that could be phased

in over a number of years. There would be no opportunity to transform or relocate industrial and commercial operations, or to identify and develop any alternatives to the existing transportation systems. Even the development of effective emergency systems to provide necessary services and commodities to residents might be pre-empted by a FIP that required instant attainment. Consequently, area residents would face the destruction of daily life as they know it, and the likely prospect of mass exodus. These results would be absurd and futile. *United States v. American Trucking Association*, 310 U.S. at 543. *TVA v. Hill*, 437 U.S. at 184 n. 29.

Another reason that the attainment date must be twenty years is that calling for attainment any sooner may conflict with other statutory requirements concerning enforcement. A literal interpretation of section 110(c)(1) would require, through section 110(a)(2)(D), that the FIP include "a program to provide for the enforcement of emissions limitations * * * as necessary to assure that [the NAAQS] are achieved and maintained." In addition, section 172(c), which applies to extension areas, like the South Coast, would require a SIP submitted in 1982 to "contain enforceable measures to assure attainment" by the end of 1987. This requirement applies to a FIP promulgated after 1987. (Passage of the 1987 date means only that a new date must be substituted for purpose of the requirement.)

Beyond that, one of the requirements of section 110(a), applicable to SIPs, is that a plan must provide necessary assurances that the State will have adequate personnel, funding and authority to carry out such implementation plan. Section 110(a)(2)(F)(i); 42 U.S.C. 7410(a)(2)(F)(i); 172(b)(7), 42 U.S.C. 7502(b)(7).

The better reading of this section is that, when EPA prepares a FIP, arguably it must comply with this provision, and demonstrate that it, rather than the state, possesses means adequate to carry out the plan.

But enforcing a federal plan calling for immediate attainment would be highly problematic. Implementation of such a plan would call for massive and intrusive enforcement efforts—to halt traffic, shut down businesses and schools, and restrict gasoline—and could well require resources beyond those available to EPA. Although the federal government as a whole might be able to call on the National Guard, state and local police, FBI, and contractors, these enforcement efforts may require

resources beyond what the federal government can muster, given its other responsibilities. Thus, although it may be possible to draft on paper a plan requiring immediate attainment, EPA may not be able to comply with the requirements of sections 110(a)(2) (D) and (F)(i) and 172(c), that the plan be enforceable and that EPA provide assurances that it can carry out such a plan. In construing what constitutes "available measures" under the *Delaney* court's formulation, EPA should avoid interpreting the term in a way that brings it into conflict with these enforceability requirements. In *Citizens to Save Spencer County v. EPA*, 600 F.2d 844, 871 (D.C. Cir. 1979), the Court stated:

If the inconsistent provisions point generally in a common direction * * * it is the task of an agency with the requisite authority to pursue a middle course that vitiates neither provision but implements to the fullest extent possible the directives of each, and it is the task of a reviewing court to ensure that the agency has effected an appropriate harmonization of the conflicting provisions while remaining within the bounds of that agency's statutory authority.

In *Delaney*, the court found that the measures imposed by Pima and Maricopa Counties did not contain sufficient control measures. But *Delaney* concerned CO nonattainment for two areas that, unlike the South Coast, failed to qualify for extensions of the 1982 deadline. CO attainment in these counties, even by EPA's calculations, could be reached within three years, using oxygenated fuels, feasible measures to reduce commuting, and enhanced vehicle emissions testing. While the court held that additional measures would be required to speed attainment, the situation it confronted is not comparable to the overwhelming task the South Coast faces in achieving attainment of the ozone and CO standards. In applying the teachings of *Delaney* to the South Coast, EPA believes that it should not allow the requirement to "attain as soon as possible" to lead to absurd or impossible results. *Griffin v. Oceanic Contractors, Inc.* 458 U.S. 2d 564, 575 (1978) [citing *Crooks v. Harrelson*, 282 U.S. 55, 60 (1930)]. See also *Commissioner of Internal Revenue v. Asphalt Products Co., Inc.*, 107 S. Ct. 2275, 2278 (1987). Moreover, it is well established that courts will not force EPA to "do an impossibility." See, e.g., *NRDC v. Train*, 510 F.2d 692, 712-13 (D.C. Cir. 1975); *Sierra Club v. Thomas*, 658 F. Supp. 165, 170-173 (N.D. Cal. 1987); *Sierra Club v. Ruckelshaus*, 602 F. Supp. 892, 898-99 (N.D. Cal. 1984).

In endorsing the longer-term attainment date adopted by the South Coast, EPA has concluded that it is fulfilling the dictates of *Delaney*. To attain the ozone standard, EPA must reduce ozone precursors by about 86 percent. Attainment of the CO standard requires 60 percent reduction in CO, mostly from mobile sources. These enormous reductions call for extreme measures. In choosing the long-term dates described above, EPA is distinguishing between the rigorous application of all available control measures, including some draconian ones, and requiring the absurd or impossible.

Regulations to be included in the proposed FIP require severe across-the-board reductions from every pollution source, many of which have never before been regulated. Because of the rigorous controls required, even stretching the attainment period over twenty years, the FIP could create substantial impacts on the country's largest industrial area. As described below, the long-term dates EPA is choosing for the ozone and CO FIPs reflect the time periods needed for the development and implementation of the necessary mobile, stationary, and area source pollution controls.

First, a long lead time is required to implement the mobile source program that forms the centerpiece of any CO or ozone attainment plan. The research and development, technological innovation, or introduction of new types of fuels and vehicles required simply cannot take place on a more accelerated schedule. For stationary and area sources very significant technological development is also a prerequisite to establishing the reliable control technologies, solvent substitutions, or other product changes that will achieve and sustain the 86 percent or more reduction in VOC content needed for attainment.

Requiring attainment in less than the time frame described above would be the functional equivalent of requiring immediate attainment—it would exact a toll so great that either the measures would be not enforceable or Los Angeles, Orange County and the rest of the basin would be forced to shut down. As described above, EPA does not believe that *Delaney* requires that result.

In the event it is concluded that the *Delaney* requirement for "every available measure" to attain "as soon as possible" cannot be construed in the manner just described, EPA nonetheless believes that its FIP proposal meets the applicable requirements of current law. As noted above, the *Delaney* court

arrived at its test for post-1987 plans by relying on a reference in EPA's own 1981 guidance to require "all possible measures" to attain "as soon as possible." EPA has decided, independently of today's proposal, however, that to the extent that guidance can be interpreted to require every conceivable measure—including gas rationing, widespread source shutdowns, and the like—such an interpretation does not reflect the Agency's original or current intent, and hence should not govern State or federal air quality planning. For that reason, as an action separate from today's proposal, EPA is revoking the portion of the 1981 guidance that requires "all possible measures", (specifically, 46 FR 7182, col. 2-3, the section entitled "Attaining NAAQS After 1987"; (2) 46 FR 7185, col. 3, the final sentence beginning "If all measures * * *" through 7186, col. 1. The carryover paragraph ending "effective control measures"; and (3) 46 FR 7188, col. 1, the last full paragraph beginning "If implementation * * *" through col. 3, the carryover paragraph ending "attainment by 1987.").

EPA instead believes that federal and state post-1987 planning (pending enactment of new law on the subject) should attain the standard "as expeditiously as practicable", by a fixed date. Section 172(a)(2). The statute does not require measures that are absurd, unenforceable, or impracticable. See *ANPR*, 53 FR 49504-49508, col. 2; 49511-49512.

In light of EPA's revocation of those portions of the 1981 guidance relied on by the *Delaney* court, the Agency believes that the *Delaney* test should no longer bind new air quality plans such as today's FIP proposal. Thus, even though EPA believes that its proposal meets the *Delaney* tests, should it be concluded otherwise, the Agency would nonetheless put forward the statutory tests articulated above as satisfying the requirements of the Clean Air Act.

d. "Every available measure". The *Delaney* court, while requiring use of "every available measure", acknowledged certain exceptions, set forth in EPA's guidance. For example, the EPA guidance document provided that measures could be rejected as not being reasonably available by showing: "that the measure would not advance attainment, would cause substantial widespread and long-term adverse impact, or would take too long to implement." Slip Op. at 2271. Consistent with this interpretation, EPA is proposing to adopt a vast range of measures, but is not proposing

additional measures because they will not advance attainment, or will cause substantial widespread and long-term adverse impact.

Again, we must emphasize that the South Coast situation differs dramatically from that of the two Arizona counties of concern to the *Delaney* court. In the Arizona situation, EPA proposed to approve three measures to attain the CO standard. The Court concluded that the state (and EPA) had not adequately articulated a rationale for failing to adopt some fifty-seven additional measures recommended in local and EPA-sponsored studies of the problem. By contrast, in the South Coast FIP and SIP, EPA is proposing to adopt over one hundred regulations, including state of the art controls. No other plan comes close to the comprehensiveness and stringency of the South Coast SIP. Layered on top of that are advances to technology that go beyond current state of the art in every conceivable category.

If EPA were to take the term "available" literally, and pile on top of the regulations it is proposing every measure—without regard to whether it would produce substantial progress toward attainment, would advance the attainment date, or could be implemented without widespread severe disruption—the result would be a deluge of measures that would overwhelm and choke the entire regulatory system. Unless a rule of reason is applied, and some screening mechanism is used to winnow out measures that, while theoretically helpful, would not substantially strengthen the plan, there will be nothing to prevent a limitless outpouring of regulations on all aspects of conduct. The consequence would be a regulatory and practical nightmare of unimaginable dimensions. Thus, EPA intends to consider "all available measures" to mean everything short of absurd that is necessary for attainment as soon as possible, but excluding those measures that do not materially strengthen the plan.

e. *Proposal in the alternative of 2000 and 2004 attainment dates for CO.* Attainment of the ambient CO standard in the most seriously affected portion of the South Coast Air Basin will require that CO emissions in that area be reduced by 60 percent from 1987 levels. Obtaining this reduction becomes very difficult because of the forecasted continued growth in vehicle use. EPA is proposing in this notice to approve two California-adopted CO control measures and to promulgate supplementary FIP measures which together represent significant advancements in emission

control technology. These measures are projected to achieve attainment in 2004, and to provide for maintenance for a reasonable period thereafter through the effect of further fleet turnover.

This attainment date, however, would be later than the target of 1997, adopted by the South Coast Air Quality Management District in its 1988 plan revision, and later than the 2000 deadline contained in both the House and Senate versions of the pending Clean Air Act Amendments of 1990. The measures proposed here for approval or promulgation would result in a predicted second-high CO level of 12.7 ppm in 2000; far below the 1987 design value of 23.4 ppm, but short of the ambient standard for CO which is 9 ppm.

EPA concluded in the ANPR that a ten-year attainment date for carbon monoxide was as expeditious as practicable. This conclusion was based on the availability, at the local level, of transportation, land use, and energy conservation measures. California's air quality management plan includes an ambitious agenda of such measures aimed at reducing CO emissions from a broad range of mobile sources, as well as other combustion activities.

While EPA hopes that the State and local governments use their wider set of available measures to fully adopt and implement an approvable plan for CO attainment by 1997 or 2000, it is also necessary for EPA to address whether the proposed FIP meets the legal requirements applicable to it. This is essentially a question of whether there are reasonably available measures beyond those proposed which would allow an attainment date earlier than 2004. For purpose of discussion, the attainment date of 2000 will be used to examine the availability of additional measures, recognizing that under existing law this date has no more special status than any other. However, the principles are the same, and the public is invited to comment on dates before and after 2000.

EPA's proposal in the SIP approval and the FIP promulgation requires all of the reasonably available improvements in fuel characteristics and advancements in vehicle emission control technology. Therefore, attainment of the CO standard in 2000 (or any date prior to 2004) could only be achieved through restrictions in vehicle use.

Feasible vehicle use restrictions would have to be within EPA's ability to enforce and, thus, could not require facility construction or intensive police enforcement against private vehicle drivers or numerous small businesses.

One might be to enforce one no drive day per week based on vehicle license plates, in the entire Basin or in the critical CO area. A second might be to reduce the total number of registered vehicles, to reduce the volume of fuel sold, and/or to discourage the registration of older vehicles, which were built to less stringent standards and tend to have suffered emissions performance loss, through a system of revenue-neutral economic incentives.

There is considerable doubt about EPA's ability to design and enforce measures which would effectively reduce VMT in the South Coast basin. One pragmatic concern is where EPA would find the staff to detect and prosecute violators of a rule which restricted vehicle operation. Another concern is EPA's ability to accurately estimate the automobile use demand curve such that economic incentives would have an immediate and measurable impact. Finally, the long term effect of vehicle use restrictions, such as no drive days, is uncertain given multi-vehicle households and the ability to shift trips to other days or other vehicles.

Regardless of these concerns, EPA feels it is necessary, in this FIP proposal, to put forth for comment an option which is designed to reach attainment by 2000. Therefore, EPA is also proposing to promulgate a measure of one no drive day per week in order to reduce VMT by 14.6% in the year 2000, the amount needed for attainment. Because of its social and economic consequences, EPA would only implement this requirement as a backstop to State and local efforts to adopt substitute measures leading to attainment in 2000. EPA solicits comments on whether advancing the attainment date by four years is sufficient to justify the necessary vehicle use restrictions. EPA will also work with California officials to review the extent to which the remaining CO problem may be localized and therefore amenable to more targeted measures.

In summary, EPA is proposing, in the alternative, an attainment date of 2004, supported by rules which require improvements in vehicle emission control technology and fuels characteristics; or an attainment date of 2000, supported by the abovementioned rules supplemented by the necessary level of vehicle use restrictions.

f. *Ozone FIP shortfall in achieving necessary VOC reductions.* As discussed elsewhere in this notice (see sections V.F and V.I.F), EPA's FIP uses the SCAG projections of growth through the year 2010. The SCAG economic and

demographic projections assume no infrastructure or other constraints to growth. EPA is using the SCAG growth projections because federal regulations assign to SCAG, as the Metropolitan Planning Organization for the area, the responsibility for making such projections. The resulting projections show dramatic increases in population and most activity levels, which retard progress under the FIP and SIP.

Consequently, after subtracting from the projected 2010 baseline inventory all of EPA's core and backstop (or committal) emission reductions, 270 tons per day of summertime VOC emissions remain, compared to the 200 ton per day level that is now believed to represent the basin carrying capacity. Since EPA projects that emissions must be no greater than 200 tons per day if the area is to reach attainment, it appears that there may be 70 tons per day of emissions, that would require controls if the area is to reach attainment by 2010. The residual emissions include principally: the remaining emissions from those stationary and area sources after the 90% deduction requirement of Backstop Group A; the remaining mobile source emissions after the controls required in Backstop Groups B, C, and D; emissions from fires; and emissions from a great variety of small combustion and process sources. EPA cannot identify, at this time available control measures that could eliminate the 70 ton per day potential shortfall, which is 4.7% of the 1987 baseline inventory (1502 tons per day) or 5.4% of the emission reductions necessary to reach attainment (1302 tons per day).

EPA is considering various measures that may become available in the future to correct any remaining shortfall. EPA could increase the stringency of the existing FIP measures. For example, EPA could increase the emission reduction requirements for Backstop Group A sources to 95% (yielding a further 35 tons per day), or could reduce the applicability cutoff of these regulations, so that all sources emitting more than a few ounces of VOC daily would be subject to control requirements. To add further reductions, EPA could accelerate the requirements for delivery of ultra clean vehicles or could increase the severity of the composite in-use standard. The FIP could also resort to various measures that would restrict vehicle use (e.g., no drive days) or more strictly control access to the area from aircraft, ships, and trains. Possibly, EPA could develop regulations and various enforcement mechanisms to attack the vast array of very small emitting miscellaneous

activities that are not controlled under the current FIP. EPA believes, however, that there are many uncertainties inherent in making socioeconomic, demographic, and emission inventories projections over a twenty-year period, particularly for an area as large and varied as the SCAB.

In the context of these uncertainties, and in order to avoid unduly increasing the severity of FIP measures, EPA proposes to leave the FIP measures as they are described below. EPA proposes to commit to tracking at least every three years the growth in emissions categories compared to the SIP's current socioeconomic projections. EPA will also monitor any emissions reductions achieved under the SIP that go beyond the FIP's reduction targets for particular source categories. Five years prior to the FIP attainment date, EPA will closely evaluate the remaining emission reduction requirements. To remedy the 70 ton shortfall (or a different shortfall amount based on the most recent actual and projected emissions data), EPA proposes to enforceably commit to prepare and promulgate by January 1, 2005, additional controls to ensure that emissions in the year 2010 are no greater than the 200 tons per day level that is predicted to result in attainment of the NAAQS for ozone. Applicable case law amply supports EPA's authority to employ such a commitment, since it is infeasible now to promulgate a sensible measure (in the form of an emissions limitation) to fill this gap, the FIP even with this commitment is substantially complete, and the commitment will not delay attainment beyond the applicable date. *Kamp v. Hernandez*, 752 F.2d 1444, 1445 (9th Cir. 1985).

6. Withdrawal of FIP Measures

EPA will establish a public process for projecting, in consultation with the State and local agencies, future levels of actual emissions. This process will give several years of advance warning on probable backstop reductions. For example, in late 1991 EPA and the State will cooperatively project 1996 actual emissions levels for the basin. This projection may show that an emissions reduction of 1 percent (rather than 6 percent) will probably be required in 1996 from Group A Backstop sources, in order to meet the RFP requirements for that year. With this projection of emissions reduction progress, EPA would be able to amend the Group A backstop rules. Alternatively, EPA could substitute less disruptive requirements for the original reduction schedule and EPA could withdraw completely the reduction requirement.

7. Compliance Approach

EPA believes that the FIP proposed today should be designed to fulfill the legal requirements of the Act through regulations that minimize the costs of compliance and are fully enforceable within the constraints of EPA's resources. EPA has therefore placed heavy emphasis on flexible regulatory approaches and the use of marketplace incentives to expand the opportunities for sources to achieve the required reductions in a least cost approach (see discussion below in section VII.A.7.a). EPA has also attempted to craft rules that allow fully effective enforcement but minimize the costs of reports and recordkeeping (these issues are discussed in the *Supporting Statement for Standard Form 83, Reporting and Recordkeeping Requirements for the South Coast Federal Implementation Plan (FIP)*, as copy of which is included in the docket). Finally, EPA must ensure that actual attainment is delivered not only on paper but through continuous source compliance. The ways in which EPA has addressed this problem are discussed below in sections VII.A.7.b and c.

a. *Marketplace approaches.* EPA believes that provision for flexibility in meeting VOC emission reduction requirements will help foster compatibility between the environmental quality and economic objectives of the South Coast. When effectively directed such flexibility musters the power of private market forces to identify, develop, and implement VOC emission reduction methods. The use of marketable operating permits with declining VOC emission limits is an economic incentive measure which can accomplish VOC emission reduction requirements at lower cost.

The backstop measures (particularly Groups A, B, and D) will foster technological change, innovation, and further emission reductions among other VOC source categories. Because these other source categories will now have a market for their excess emission reductions, they will have an incentive to go beyond currently prescribed emission reduction requirements.

Marketable operating permits with declining VOC emission limits offer several advantages. The phased approach to VOC emission reduction requirements in the Group A backstops (nothing for the first five years, then 6 percent per year for 15 years) provides an opportunity for the permitted source to search for emission reduction opportunities in a non-panic "buying"

mode. The phased approach also provides an opportunity for suppliers of VOC emission reduction techniques and credits to further develop and refine their products and time to find their buyers, and establish their niche in the market place. In addition, the marketability aspects of the VOC emission reductions provide an opportunity for sources affected by the backstop measures to go beyond narrowly defined VOC emission reduction possibilities at the "end of the pipe" and to explore pollution prevention options including process change, product reformulation, as well as innovative end-of-the-pipe treatment possibilities across all source categories. With these greater VOC emission reduction possibilities comes a greater potential for control cost savings for the backstop measure source categories and increased revenues for the suppliers of VOC emission reductions.

Means to minimize the cost of searching out these opportunities need to be explored. We expect the private sector can provide means such as bonded brokers to help lower the cost of search. Information clearinghouses and formation of partnerships among smaller elements in the backstop measure source categories (seeking VOC emission reductions) can also lower the cost of search.

To be effective and enforceable, the VOC emission reductions would have to be verified and validated in the periodic permit issuance and renewal process. As noted above, to lower search costs, the emission reductions and permit trades could be brokered by bonded private sector entities. However, with trading and brokering, vicarious liability provisions should exist for the seller and where appropriate the broker. Like the sulfur dioxide emission reduction allowances for acidic deposition provisions of the proposed Clean Air Act Amendments, the commodity available for trade is an emission reduction privilege. As is the case in those provisions, steps should be taken with this measure to provide stability and reduced uncertainty for the VOC emission reduction market.

Hydrocarbon species vary in photochemical reactivity and control cost. Where feasible, it makes some sense to allow inexpensive reductions in a highly reactive hydrocarbon in place of expensive reductions of a less reactive one. Similarly, the site where emissions occur affect their ozone-forming potential and the population exposed; control costs also vary between sites. Reactivity- and geography-indexed trading of emission

reductions between polluters would help ensure that the ozone NAAQS is met at least cost. However, daily and local impacts must be balanced against multi-day and regional effects of reactivity and location changes in emissions. Also, given the 86% emission reduction necessary, both highly and less reactive hydrocarbons need to be reduced. EPA invites comment on whether these trading indicies should be pursued and, if so, how they could best be developed and implemented.

The involved California agencies and EPA are consistent in their aim to fashion effective VOC emission reduction strategies which provide for achievement of environmental quality objectives without unduly thwarting economic objectives. The use of economic incentives such as marketable operating permits with declining VOC emission limits provide a mechanism to develop VOC emission reduction strategies which are on target. EPA enthusiastically supports the use of economic incentives to meet environmental objectives at lower cost. Finally, both SCAQMD and SCAG are actively investigating ways that local agencies and local governments can use incentives to promote air quality progress. EPA encourages successful development of these approaches in the SIP and, if appropriate, in the FIP.

b. Resource constraints. Under the existing Clean Air Act, EPA is not given specific authority to compel State and local enforcement of a federally promulgated plan. While EPA will encourage the appropriate State and local agencies to adopt comparable regulations or to accept delegation to enforce the FIP, EPA must construct a FIP that can be effectively enforced by EPA alone. This constraint forces most FIP measures to rely on approaches that enable very straightforward compliance determinations. In addition, EPA's limited staff are insufficient to allow for formal EPA approval of source compliance plans from the thousands of regulated entities, though EPA strongly prefers a formal approval process. Therefore, certain of the Group A backstop measures, for example, ask sources to submit compliance plans (and resubmit compliance plans if they are not acceptable), but provide for immediate EPA enforcement of the plans upon submission. If EPA's resources allow in the future, EPA will amend the FIP rules to provide for formal EPA action on each compliance plan.

c. Rule effectiveness. Rule/program effectiveness (i.e., the degree of actual emission reductions, or "actuals,"

expected from enforcement of rules, compared to the possible rule emission reductions assuming 100 percent compliance) will be handled differently in the South Coast FIP compared to the rest of the nation for several reasons. EPA intends to follow a two-part procedure:

(1) As the State's new rules and the FIP's backstop and core measures are implemented, EPA will assess emission reductions periodically on an *actuals* basis.

(2) Where actual emissions do not track the expected emission reductions assumed for a set of measures, EPA will enhance enforcement of the measures, and/or propose to require additional reductions from subsequently-applied backstop measures to make up the lack of full measure effectiveness.

In developing the South Coast FIP, EPA has made no attempt to estimate at the outset of control strategy development the compensating factors for rule/program effectiveness because of:

(1) The extremely high level of emission reductions needed in the South Coast;

(2) The long term nature of the nonattainment problem in the South Coast, which reduces the certainty of what emissions reductions will be achieved in the distant future;

(3) The uncertainty of which measures (e.g., State, local, or federal) will actually be imposed for each control category;

(4) The extent to which, in the South Coast FIP, the effectiveness of many measures depends upon effectively prohibiting sale and/or use within the area of common products that are nationally distributed;

(5) The fact that almost all of the FIP measures have never been fully developed or used in any other area, where rule effectiveness might be evaluated.

Furthermore, the situation in the South Coast is entirely unlike the situation faced by other States in developing their own SIPs. This FIP has backstop measures, which, by their very nature, are designed to fill in where the SIP measures fail to obtain sufficient reductions, including situations where compliance is less than full (i.e., all sources in compliance all the time).

As noted, the South Coast FIP situation is different from other SIPs for other areas, and it should not be considered precedential. EPA will continue to require that State-developed SIPs for other areas account for rule/program effectiveness according to EPA guidance as they prepare their emission

inventories and develop and perform their control strategy analyses.

8. Geographic Extent of the FIP Measures

During the preparation of the FIP, EPA attempted to ensure that each FIP core and backstop rule, as implemented, would actually achieve the necessary emission reductions associated with the rule. EPA was particularly concerned to minimize: (1) The opportunities for circumvention of the FIP rules through the purchase of nonconforming products immediately outside of the boundaries of the South Coast Air Basin for use within the basin; and (2) the immigration of non-conforming vehicles and the use of nonconforming fuels in vehicles operated within the basin. To address these concerns, EPA considered giving the FIP rules an expanded geographic coverage that would include the full four county area for most of the FIP measures.

EPA is also anxious, however, to reduce the extent to which the FIP disrupts the area's economy. In analyzing these two competing interests, EPA now inclines to restrict to the South Coast Air Basin the applicability of all of the FIP core and backstop measures, except for the two national core measures. The proposal reflects this position. EPA solicits comment on the alternative approach of applying the requirements of some or all of these rules throughout the four counties and, with respect to the Ultra Clean Motor Vehicle Program (Group D Backstop Measure), EPA invites comment on possible statewide application. Possible statewide application is discussed further at section VII.C.2.C.

The South Coast Air Basin is bounded by the Pacific Ocean to the west; the San Gabriel, San Bernardino, and San Jacinto mountains to the north and east; and by San Diego County to the south. The Basin includes all of Orange County and the non-desert portions of Los Angeles, Riverside, and San Bernardino counties. EPA will supplement this notice with a promulgation of a more specific definition of the SCAB. A close approximation of the current SCAB boundaries may be found at 40 CFR 81.17 (Definition of the Metropolitan Los Angeles Air Quality Control Region), exclusive of Ventura County and Santa Barbara County.

B. Core Control Measures

1. Introduction

Discussed below are the core rules for both the regulatory FIP (Option I) and the committal FIP (Option II). The core control measures at the time of final

promulgation of this FIP are expected to be technically feasible, cost-effective, legally enforceable and able to be implemented expeditiously.

2. Oxygenated Fuels Program

A relatively new control strategy for reducing CO emissions from motor vehicles is oxygenated fuels. Oxygenated fuel programs recently have been successfully implemented in several areas of the country by State and local pollution control agencies. In a previous FIP action, EPA proposed an oxygenated fuels program in the State of Arizona (53 FR 17378). (The State subsequently adopted a similar program as part of a revised SIP.) More recently the Administration's proposed Clean Air Act amendments would have required these fuels in serious CO nonattainment areas. Because of the recognized benefits of oxygenated fuels in reducing CO emissions, the Agency is proposing such a measure for the South Coast area as part of today's action.

The primary advantage of an oxygenated fuels program is that the measure generally yields substantial, cost effective CO reductions in a relatively short period of time. The strategy also can be geographically and temporally targeted to address typical wintertime CO problems. This is not to suggest, however, that the measure is devoid of potentially significant economic or air quality implications that must be carefully weighed before establishing such a program. In fact, mandating the use of oxygenated fuels in the Los Angeles area raises air quality concerns relative to exacerbating other environmental problems. Nonetheless, EPA believes optimistically that these concerns can be accommodated in the design of the program, as discussed later.

a. *The basics of oxygenated fuels.* An oxygenated fuel causes a motor vehicle engine to run with a slightly leaner overall fuel/air mixture, thereby reducing the amount of CO generated during the combustion process. An oxygenated fuels program can be structured to take advantage of this phenomenon. First, the fuel sold in a CO nonattainment area is required to contain a concentration of oxygen during the period when exceedances of the ambient standard occur. Second, the oxygen content of the fuel is required to be well above the level normally present in gasoline. Such concentrations can only be achieved by adding chemical compounds that contain oxygen and are miscible in gasoline. The most suitable, available, and economical compounds for this purpose are aliphatic alcohols

and ethers, generically referred to as oxygenating compounds or oxygenates.

Presently, the types and permissible amounts of oxygenating compounds in unleaded gasoline are regulated by EPA under section 211(f) of the Clean Air Act. The Agency's current "substantially similar" requirements prohibit unleaded gasoline from containing more than 2.0 percent oxygen by weight. This prohibition may be waived by the Administrator upon specific request by a manufacturer, or a waiver is automatically granted if EPA fails to deny such a request within 180 days of receipt. Leaded gasoline is not subject to these regulations.

Several waivers have been granted, with 3.7 percent oxygen by weight being the maximum permissible legal limit at this time. The most commonly used oxygenating compounds are methyl tertiary butyl ether (MTBE) and ethanol (ethyl alcohol). The maximum oxygen content using these compounds is 2.7 and 3.5 percent for MTBE and ethanol blends, respectively.

It is also possible that additional oxygenated fuels may be available in the future. For example, EPA is currently reviewing a request by the Oxygenated Fuels Association to change the substantially similar rule, mentioned above, from 2 up to 2.7 percent oxygen. This would allow much higher oxygen concentrations without the need to obtain a special waiver for each oxygenate. It would also provide greater flexibility in blending fuels up to 2.7 percent because of the possibility that more than one oxygenate of choice could be used in a single gasoline blend. Also, a new compound called ethyl tertiary butyl ether (ETBE) also shows promise as an oxygenate. This ether, which is produced with ethanol as a feedstock, seems to offer some advantages over other blending agents such as low volatility and high octane content. EPA believes it is advantageous for consumers to have a choice of oxygenated fuels, and is encouraged that several oxygenates appear suitable for use in oxygenated fuel programs.

b. *Emission Qualities of Oxygenated Gasoline.* One of the key considerations in evaluating the overall appropriateness of a wintertime oxygenated fuels program is how different oxygenates affect the various pollutants from motor vehicles. The interaction between fuels, motor vehicle emissions, and the ultimate air pollution effects of those emissions is complicated and is the subject of ongoing study. EPA summarized much of the available information on this topic and presented methodologies for evaluating emission

effects of various fuels in "Guidance on Estimating Motor Vehicle Emission Reductions From the Use of Alternative Fuels and Fuel Blends." This document was published on January 29, 1988, and is the basis of the emission reduction estimates for oxygenated fuels contained in today's notice. Because many of the details of oxygenated fuels are available from that report and the support document for this action, only the more salient effects of oxygenated fuels that are important in understanding the ramifications of oxygenated fuels on air quality in the South Coast Air Basin are described below. The implications of these effects on the design of any oxygenated fuels program for this area will be discussed in the next section.

The benefits of any oxygenated fuel in reducing CO emissions increases as the oxygen content is increased. Also, all else being equal, all oxygenating compounds appear to have the same CO reduction potential at a given oxygen content. Therefore, the ability to reduce CO emissions is generally related to the oxygen content of the fuel, and not the type of oxygenate. However, some oxygenates can directly or indirectly affect other fuel properties, which in turn may affect the CO reduction potential of the final blend.

Of primary interest here are changes in gasoline volatility, i.e., the tendency to evaporate at various temperatures. One widely used measure of this effect is Reid Vapor Pressure (RVP). While all oxygenates show some tendency to increase fuel volatility under certain conditions, from a practical perspective, it is a special concern only for alcohol-based blends. It also appears more relevant to ethanol blends, because this compound is the most commonly used alcohol for this purpose, and it has been granted a special exemption from meeting the Federal summertime RVP standards (55 FR 23658), as discussed elsewhere in today's notice. If an oxygenated fuel has a higher volatility than the baseline gasoline, its CO reduction will be less than a comparably oxygenated fuel (i.e., same oxygen content) with a volatility equal to the base gasoline. The volatility boost of alcohol-based oxygenating compounds can be compensated for by using special low RVP blending stock or by otherwise accounting for this effect at the refinery.

In addition to CO, it is also important to consider how oxygenated fuels might affect other motor vehicle-related emissions. Exhaust HC generally decreases when oxygen is added to the fuel. At the same time, the chemical composition of the mixture is altered

somewhat, e.g., there may be a small increase in aldehyde emissions. Evaporative HC emissions (i.e., fuel which evaporates and escapes to the atmosphere before it is burned in the engine) may also be affected. Unless fully compensated for, the increase in volatility caused by alcohol-based oxygenates may increase evaporative emissions. Also, the chemical composition is changed somewhat and may include a small percentage of the oxygenating compound.

Oxygenated fuels can also effect NO_x emissions. The available data show a significant variation in NO_x impact from various oxygenated fuels and among vehicles. The interaction between fuel properties and changes in this pollutant are not fully understood. One important factor may be the energy density of the fuel, which in turn depends on the hydrocarbon speciation of the fuel.

c. *Program Option Selection.* There are two basic options for the overall design of an oxygenated fuels program: (1) Establish a minimum oxygen concentration for all gasoline; or (2) establish an average concentration that must be met by gasoline suppliers over a specified time period. This second option can be patterned after the gasoline lead phasedown program, by including the trading of marketable "oxygen credits" among fuel suppliers to increase marketing flexibility. The choice of options depends on the size of the required CO reduction, or level of oxygen required; the degree to which consumers and suppliers can choose between oxygenated blends; and the complexity of the program itself.

In view of the relatively substantial CO reductions and associated high oxygen content needed in the South Coast Air Basin, EPA believes that on balance the averaging approach appears preferable. Specifically, the advantages of maximizing consumer choice and marketing flexibility outweigh the disadvantages associated with the increase in recordkeeping and added enforcement burden. Therefore, a trading and averaging scheme is included as part of the proposed oxygenated fuels program. Further, the Agency has identified an average oxygen content of 2.7 percent as a reasonable compromise between a requisite high CO reduction that is obviously needed, and trying to ensure that a variety of oxygenated fuels may be marketed in the region.

d. *Special considerations for the South Coast Air Basin.* Implementing an oxygenated fuels program in the South Coast area requires some special considerations due to California's

unique air quality problems. Specifically, concerns have been raised that this control strategy may reduce CO at the expense of exacerbating existing ozone, NO₂, and PM₁₀ problems in the region. Ozone Air quality concerns center on the possibility that oxygenated fuel usage may increase NO_x and evaporative HC emissions, which are ozone precursors, or make the overall mixture of emissions from vehicles using these fuels more photochemically reactive. The NO₂ and PM₁₀ concerns are both related to potential increases in NO_x emissions.

Assuming for the moment that these environmental side effects were allowed to occur, there are two ways in which a wintertime oxygenated fuels program may affect the actual attainment status for these pollutants in the Los Angeles area. First, the CO season overlaps with the NO₂ and PM₁₀ seasons, and possibly to a lesser extent the ozone season. In this way, the wintertime CO control strategy could directly affect the levels of these other pollutants. Second, the economics of mandating wintertime oxygenated fuels might create a summer market where none previously existed. In this way, summer ozone levels could be indirectly affected by the wintertime oxygenated fuels program.

The above concerns can be addressed as two separate issues. The first issue involves potential NO_x increases and the essentially year round effects on ozone, NO₂, and PM₁₀ levels. As already noted, the available data show NO_x emissions from current oxygenate blends may increase or decrease, probably depending on the composition of the fuel's hydrocarbon portion. To the extent that this increase would cause exceedances of the ambient standards, either corresponding offsets from other sources must be found, or a fuel-related solution must be found.

The Agency's current approach is to seek the fuel-related solution, since identifying NO_x offsets is beyond the scope of this rulemaking. To accomplish this, EPA is including a general requirement in today's proposal that prohibits oxygenated fuels from increasing NO_x emissions beyond the levels associated with gasolines currently marketed in the South Coast area. A similar requirement has also been proposed as part of the Clean Air Act amendments in the U.S. House of Representatives and Senate.

Under this prohibition, all oxygenated fuels sold in the control area must be certified by the administrator as meeting the NO_x limitation. To ensure that a specific reformulation becomes available in a timely manner, EPA

would require that all refiners intending to market fuel in the control area register with the Agency at least two years before the effective date of the regulations, and provide a gasoline formulation that meets the above NO_x performance requirement.

The Agency requests comments on the feasibility of this approach and on additional approaches to ensuring that the use of oxygenated fuels in the South Coast does not adversely affect NO_x emissions.

The second issue involves volatility-driven evaporative HC increases and the potential increased photochemical reactivity of the resulting mixture of motor vehicle emissions. As discussed earlier, this phenomena is related primarily to the use of ethanol blends, during the summer ozone season. It has been the subject of several air quality modeling studies, and because of the complexities involved, some controversy remains.

Presently, both EPA and ARB allow a one pound per square inch (psi) RVP allowance from the summertime volatility standards for ethanol blends. As part of EPA's decision to grant that allowance, the potential effect of ethanol blend use on ambient ozone concentrations was reviewed from a nationwide perspective (55 FR 23658, June 11, 1990). The Agency concluded that the likely small adverse air quality effect did not justify the almost certain elimination of the ethanol fuels industry, which had become a significant part of many local economies around the country.

There are several important considerations in examining the issue of continuing the summertime RVP allowance for ethanol blends, in addition to determining the legitimacy of the concerns regarding any ozone increase in the South Coast from a mandatory oxygenated fuels program. First, the current market for ethanol blended gasoline in the Los Angeles area appears to be quite small, so the supporting analyses for today's proposal do not explicitly include the RVP allowance. Second, the current small market share suggests the economic effects of not continuing the RVP allowance in this particular area may not be as significant as in other areas of the country. Third, attempting to forecast the potential use of ethanol blends to satisfy the requirements of the proposed oxygenated fuels program is highly uncertain. Fourth, other substitute oxygenates, including ETBE made from ethanol, are available and waivers for other blending compounds, which have no significant volatility effect, may be granted in the future.

In light of these considerations, and in the absence of other clearly identified measures that could reasonably be expected to offset any potential increase in ozone, the Agency believes this situation deserves a cautious approach at this time. Therefore, EPA proposes to discontinue the current summertime RVP exemption for ethanol blends. Nonetheless, comments are requested on the need and desirability of continuing the allowance.

The Agency's wintertime CO analysis also assumes the absence of an RVP exemption for the remaining months of the year. Nonetheless, it is recognized that an exemption during the wintertime months of the CO nonattainment season may offer fuel suppliers some advantage without adversely affecting other pollution problems. Therefore, comments are requested on the desirability of providing ethanol blends with a one psi RVP allowance from November through February of each year within the CO control area. If such an allowance is provided in the final rule, the proposed oxygen content may have to be adjusted upward to offset the resulting lower clean air potential of these higher volatility blends.

As an alternative to establishing separate requirements for oxygen content, NO_x emission limitations, and disallowing any volatility allowance for ethanol blends, the Agency requests comments on setting performance standards for gasoline that would accomplish the same clean air goals, but provide greater flexibility for fuel refiners and suppliers.

e. Description of the Oxygenated Fuels Program. As already noted, the Agency is proposing to implement a wintertime oxygenated fuels program for the South Coast area, with an optional averaging and trading compliance scheme. Many of the details of this program are patterned after a previous FIP proposal for the State of Arizona. For a more detailed explanation of the specific program elements than is provided below, please consult EPA's Arizona FIP proposal, published on May 16, 1988 (53 FR 17379).

(1) **Program Duration.** The intent of the program is to provide the benefits of vehicular operation on oxygenated fuels during the time of year when the South Coast area would otherwise experience exceedances of the CO NAAQS. A review of the monitoring data suggests violations may occur from approximately November 1 until March 1. Therefore, the oxygenated fuels program is proposed to coincide with this same period each year. The compliance schedule offset for fuel suppliers versus retail outlets will follow

that contained in the existing Federal gasoline volatility regulations.

(2) **Geographic Scope.** The requirements of the oxygenated fuels program would apply to all gasoline first introduced into commerce within the South Coast Air Basin.

(3) **Oxygen Content and Other Fuel Specifications.** The required oxygen concentration for gasoline sold during the mandated period is 2.7 percent by weight. While EPA is not proposing other specific options for oxygen content, the Agency is interested in comments on a range of from 2.0 to 3.1 percent oxygen as an alternative. Additional specifications include a "no NO_x increase" requirement. Under this restriction, all oxygenated fuel introduced for sale into commerce within the control area must be certified by the Administrator as meeting this requirement. The Agency is proposing a requirement that would require ethanol blends to meet the same volatility limits as apply to other gasoline.

(4) **Optional Compliance Demonstrations.** Two compliance options are available. Under the first option, each batch of gasoline sold, supplied, or offered for sale during the control season would have to have a minimum oxygen content of 2.7 percent. Under the second option, all gasoline sold or supplied during each calendar month compliance period would be required to have an average oxygen content of 2.7 percent. In meeting this monthly average standard, regulated parties would be allowed to trade oxygen credits during the monthly compliance period. Regulated parties choosing the first option will have fewer recordkeeping requirements.

(5) **Effective Date.** The program should start on the earliest date that will not disrupt the supply of gasoline or cause unreasonable cost increases. Because the combination of this and other fuel related proposals could cause complex implementation problems requiring careful coordination, the task of supplying the South Coast area with a special gasoline is difficult to gauge at the present time. The Administration's Clean Air Act amendments would have provided approximately four years to implement oxygenated fuel in serious CO nonattainment areas from the date an amended Act was passed. Therefore, the Agency is proposing to provide a similar lead-time for implementing such a program in the Los Angeles area. Assuming the final rule for this action is published in February 1991, the effective date of the program would be November 1, 1994.

The Agency welcomes comments on all aspects of the proposed oxygenated fuels program.

3. Gasoline Volatility Restrictions

a. Ozone season restrictions. On June 11, 1990 (55 FR 23658) EPA promulgated the second phase of a two-phase program for national, summertime gasoline volatility control. Under this final rulemaking, gasoline Reid Vapor Pressure (RVP) in the state of California is limited to a maximum of 9.0 pounds per square inch (psi) for the month of May and 7.8 psi for June through September 15 beginning in 1992. Current California regulations limit the RVP of gasoline to 9.0 psi for the period of April 1 through October 31 in the South Coast air basin. In March, 1990 ARB proposed to reduce the maximum allowable RVP limit to 8.0 psi for the same control period (see discussion under section V.D.3 of this notice).

The volatility of gasoline directly impacts the emission of hydrocarbons. The higher the volatility, the greater the potential for the generation of evaporative emissions during the production, distribution, and use of the fuel. Source categories affected include gasoline transfer and storage and off-highway vehicle emissions as well as highway vehicle emissions. Thus, further RVP control can result in significant hydrocarbon emission reductions. In addition, these reductions are immediately available upon implementation.

Lowering RVP limits has raised issues regarding drivability and fuel safety. Specifically, concern has been expressed that low RVP gasoline would negatively affect drivability and could lead to the formation of an explosive mixture in the gas tank at lower ambient temperatures. EPA analyzed both of these issues in detail in the final Regulatory Impact Analysis for the second phase of the federal volatility regulations. Additional analysis specific to the South Coast Air Basin is contained in the Technical Support Document in the docket for this notice (*South Coast Ozone/CO FIP Proactive Control Measures for Controls on Volatility of Gasoline and Gasoline Blends*). EPA has concluded that any perceptible drivability problems should be negligible and that it is highly unlikely that tank vapor pressure conditions will occur which are lower than are currently being experienced nationally during the winter.

In developing the Phase II program, EPA performed an analysis of climate and elevation in order to determine what RVPs would result in equivalent per vehicle emissions nationwide. The

results of this analysis were similar to the American Society for Testing and Materials (ASTM) system, including considerable variability by state and by month. To simplify enforcement and make compliance less complex for refiners and distributors, the final system of standards simplifies the results of the climate based analysis. In general, all states have an RVP standard of 9.0 psi in May, and either a 9.0 or 7.8 psi standard for the remainder of the control season. Average temperatures in the South Coast Air Basin are high enough to sustain a reduction in RVP to 7.0 psi with only a slight increase in potential drivability problems under a worst case scenario during the months of June, July, August, and September.

Due to the length of the ozone season in the South Coast Air Basin, EPA is proposing to extend the 7.8 limit of the national rule to the months of April, May, and October beginning April 1, 1992, the same year the second phase of the national program takes effect. To obtain maximum emission benefits from RVP control, EPA is further proposing to limit RVP to 7.0 psi for the months of June, July, August, and September, the warmest months when the highest ozone readings occur. In order to allow refiners the opportunity to coordinate any changes in refinery processes necessary to meet the reduction of RVP to the 7.0 psi standard with those necessitated by the proposed requirements for reformulated gasoline, this second phase of the regulation would be implemented beginning June 1, 1994. EPA proposes to restrict the control area for the RVP program to the boundaries of the South Coast Air Basin. The compliance schedule offset for fuel suppliers versus retail outlets contained in the federal volatility rulemaking will continue to apply under this proposal.

As discussed above under the proposed Oxygenated Fuels Program, EPA allows a one psi increase in RVP from the summer volatility standards for ethanol blends. Since this allowance could potentially decrease the VOC benefit to be obtained from the further reduction in the RVP standards proposed here, EPA is proposing to discontinue the one psi summertime RVP exemption for ethanol blends in the South Coast Air Basin.

Finally, it should be noted that the enforcement regulations promulgated for the Phase I national RVP program have been changed for the Phase II program such that EPA will take enforcement action only when RVP is measured at more than 0.3 psi above the applicable standard, provided that the responsible party measured the RVP at or below the standard. This policy takes into account

the 0.3 psi average reproducibility of the RVP test method, and makes the EPA program consistent in this respect with the California RVP control program.

b. Wintertime restrictions for carbon monoxide. In vehicles equipped with evaporative controls, high RVP fuel can result in higher CO tailpipe emissions. When the hydrocarbons adsorbed on the carbon in the evaporative canister are purged to the engine for combustion, the enrichment of the fuel/air mixture can result in increased carbon monoxide. Under state law wintertime RVP levels are controlled to the recommended ASTM levels. The 1987 Motor Vehicle Manufacturers Association fuel survey data give an in-use, wintertime RVP value of 11.2 psi for Los Angeles. After review of drivability and safety issues, EPA believes that an RVP level as low as 10.0 psi is feasible in the winter months in the South Coast Air Basin. EPA is, therefore, proposing to limit the RVP of gasoline in the basin to a maximum of 10.0 psi for the period of November 1 through March 31 beginning November 1, 1992. As with the summertime volatility program discussed above, EPA is proposing to restrict the control area to the South Coast Air Basin.

Under EPA's final rulemaking for Phase II RVP control, the temporary 1.0 psi RVP allowance provided in the Phase I program for gasoline containing 9 to 10 percent ethanol was made permanent. Because it is necessary to obtain the maximum CO benefit from this control measure, the Agency is proposing not to provide the 1.0 psi allowance for ethanol blends during the wintertime volatility control season in the South Coast Air Basin.

4. Reformulated Gasoline

a. General. Today's proposal includes measures directed at highway motor vehicles and motor vehicle fuels that will achieve large further reductions from the already controlled VOC emissions from highway vehicles. Nevertheless, the remaining emission reduction required for ozone attainment is large, and it has been necessary to propose annual reductions in VOC emissions from a number of non-vehicle VOC source categories. These reductions of 6 percent per year begin in 1995, and will ultimately limit these other sources' emissions in 2010 to 10 percent of their 1987 level. Fuel reformulation in the years between 1995 and 2010, when a substantial percentage of vehicles designed to operate on conventional gasoline still exist, might provide additional intermediate year emission reductions. By 2010 much of

the vehicle fleet will be composed of unconventional vehicles certified to meet the proposed ultra clean motor vehicle VOC standard. The emission reduction from unconventional vehicles and reformulated gasoline might permit a delayed schedule for annual reductions or higher limits on stationary source categories that otherwise would be more restricted.

EPA's two phase proposal for 7.8 psi and 7.0 psi limits on gasoline volatility in the ozone season has already been stated. These limits will significantly affect gasoline composition and refining processes. EPA further proposes an additional performance standard for gasoline that would reduce total VOC mass emissions from conventional vehicles or that would shift the VOC composition more toward chemical compounds with less of a tendency to assist in ozone formation. EPA proposes a reduction of 15 percent from the emission level achieved via the respective 7.8 psi and the 7.0 psi gasolines proposed for the ozone season beginning April 1, 1994. EPA also invites comments on an alternative percent reduction, in the range of 10-25 percent.

EPA's understanding is that oxygen content, aromatic content (generally, or of specific aromatic components), olefin content, and the distillation characteristics of gasoline can all affect emissions quantity and composition. The effect of oxygen content on VOC mass has been explored experimentally, as has the effect of aromatic content on benzene emission in particular. The effects of the other fuel variables have until recently been much less studied. (Information on the current state of knowledge, and lack of knowledge, is included in the TSD.) However, a group of vehicle manufacturers and petroleum companies has underway a large scale testing program to explore such effects. The proposed FIP requirement for gasoline reformulation is expressed as a performance standard for an emission reduction percentage compared to a baseline gasoline. The performance standard may be implemented through a nominal composition specification and formulas for counterbalancing deviations from this specification, or through an emissions testing protocol to demonstrate equivalency.

Amendments to the Clean Air Act may be enacted prior to the final rule on the FIP, and may mandate gasoline reformulation in the South Coast area. If so, EPA's final FIP promulgation may recognize additional VOC reduction from a statutory requirement, and adjust other measures accordingly.

b. *Overall performance standards for reformulated gasoline.* As noted above,

EPA is proposing a performance standard for gasoline that would achieve a 15 percent reduction in ozone-forming emissions beyond the levels associated with the proposed volatility restrictions. The concept of a performance standard for gasoline offers refiners the maximum flexibility in developing the requisite fuels in the most desirable and cost effective way possible. The Agency believes this concept may offer similar advantages if it were expanded to encompass the other fuel-related requirements contained in the FIP proposal, i.e., volatility restrictions and oxygen content requirements. Therefore, EPA is requesting comments on establishing overall performance standards for gasoline, as a direct replacement for specific controls on physical characteristics or fuel content.

There would be two summertime performance standards that would represent equivalent reductions in ozone-forming emissions. The first performance standard would reflect the combined emission reductions associated with 7.8 psi RVP gasoline and the additional 15 percent reduction requirement. The second would reflect 7.0 psi RVP gasoline and the additional 15 percent reduction requirement. There would also be a single wintertime performance standard that would represent equivalent reductions in CO emissions associated with both the 10.0 psi RVP and 2.7 percent oxygen content proposals.

5. National Control Measures

The Agency has recently proposed additional Federal motor vehicle control requirements to prevent excess evaporative emissions (55 FR 1914) and, in the near future, intends to propose new standards for reducing CO emissions at lower ambient temperatures. The Agency's proposed Federal regulations will apply to all vehicles sold in California, as explained below, because the State has no equivalent provisions. Therefore, as part of today's action, EPA is: (1) Specifically noting the applicability of the proposed evaporative emission rulemaking to vehicles sold in California, and (2) committing to adopt cold CO emission standards for these vehicles as part of the upcoming Federal proposal. Therefore, the benefits of the national rulemakings extend to the South Coast Air Basin.

Before discussing the two control strategies, it is important to understand the relationship between the current Federal and California mobile source programs. Basically, the CAA generally prohibits States from enforcing

standards applicable to the emissions of new motor vehicles that are otherwise subject to the Federal emissions control program. This pre-emption may be waived for a State that had standards prior to March, 1966 (i.e., only California) by the Administrator under the provisions of section 209, thereby allowing California to enforce its own separate emissions control program. The conditions for receiving such a waiver include the existence of a compelling air quality problem and a finding that the State standards, in the aggregate, are as protective of public health as the otherwise applicable Federal standards. The State of California has received waivers for its motor vehicle standards and enforcement procedures.

As alluded to earlier, the Federal evaporative emission proposal has already been published. Today's notice simply reiterates the nationwide scope, and hence applicability to the State of California, of the previous proposal. Because of this, only a brief description of the proposal is provided here. For more detailed discussions; as well as the technical support for the proposed rule, the interested reader is referred to the January 19, 1990, Federal Register notice referred to above. The reader also should consult that document for the text of the draft regulations (i.e., 40 CFR part 86), keeping in mind that some changes may be necessary to ensure California applicability when the FIP is promulgated. Also, even though the proposal for the cold CO standards is substantially complete, it has not been published. Therefore, only a brief description of the anticipated rule can be provided below.

Although California currently does not have similar cold CO and enhanced evaporative controls, the California Air Resources Board is considering such requirements. If and when the State adopts these measures, EPA anticipates substituting them for the Federal measures being proposed here, to the extent possible.

a. *Cold temperature carbon monoxide (CO) standards.* The current Federal motor vehicle control program requires compliance with CO emission standards at temperatures between 68 and 86 degrees Fahrenheit. The Agency has found that many violations of the NAAQS for this pollutant occur below these temperatures. In the South Coast Air Basin, for example, exceedances of the standard routinely occur when temperatures are in the 50 degree range. Also, the emissions control performance of many vehicles certified in compliance with the present standards is degraded

at lower ambient temperatures, causing CO emissions to increase significantly.

The cold CO rulemaking will help address the above phenomena by establishing emission standards applicable to vehicles when operated at a normal temperature of 20 degrees Fahrenheit or above. The Agency anticipates that compliance with the standards which are currently under consideration is readily achievable at low cost using improved engine calibrations and, in some cases, improved emission control hardware. The standards should be fully effective sometime during the mid-1990s.

b. *Enhanced evaporative emission controls.* Evaporative emissions from gasoline-fueled motor vehicles have been regulated by EPA for many years. The intent of the present evaporative standards and associated test procedures was to effectively control these emissions in actual use. However, the Agency now finds that the present test procedures do not provide such control. Specifically, the procedures are based on a rather moderate, single diurnal temperature variation, i.e., one daily temperature cycle. Also, new information has shown that "running losses," or evaporative emissions generated while the vehicles are in actual operation, are essentially unregulated by the current test.

The Agency's evaporative emissions proposal affects light-duty vehicles, light-duty trucks, and heavy-duty trucks that are fueled with gasoline. The test procedure changes include using two diurnal heat builds at the end of the current Federal Test Procedure, a representative temperature range of 72-96 degrees Fahrenheit for each diurnal cycle, removing the fuel tank cap near the beginning of the hot soak portion of the test procedure, and an engineering review of control system designs to ensure that any vapors generated under conditions typical of high-ozone days are routed to the evaporative control system. No specific implementation date has been proposed, but it is anticipated the new test procedure would become effective sometime after the 1991 model year. In addition, EPA has specifically requested comments on a more comprehensive proposal from General Motors that may involve the use of an enclosed dynamometer test for the actual measurement of running losses.

6. Controls on Marine Vessel Tanks

The South Coast Air Basin contains two major seaports: The Port of Los Angeles, and the Port of Long Beach. These ports receive large quantities of crude oil from Alaska and other California coastal areas for refining and

use in the South Coast Air Basin. The ports also load petroleum intermediates and other liquid products onto marine vessels for shipment to other ports.

The uncontrolled unloading, loading, ballasting, and housekeeping operations associated with the marine transfer of organic liquids results in the release of VOCs to the atmosphere. The unloading of marine tanks vessels leaves hydrocarbons in the tank vapor spaces; inert gases are normally added to these vapor spaces to avoid explosive mixtures. Venting of these tanks can release VOCs or mixtures of inert gases and VOCs to the atmosphere.

The loading of marine vessel tanks causes VOC release by displacement of the vapors in the vapor space, as does the loading of ballast water into tanks previously containing organic liquids. Purging and gas freeing of tanks prior to maintenance also results in VOC release.

The proposed standard would establish a 95% control efficiency (by weight) for the control devices used to control emissions, and would limit loading to marine vessels with vapor tight collection systems. It would also require ships to be vapor tight. The standard would apply to all transfer operations in which organic liquid is loaded into marine vessels or unloaded from marine vessels at bulk terminals or between two vessels, but would exempt loading events of less than 159 cubic meters (1000 bbls) and the loading of liquids with a true vapor pressure 77.5 mm Hg (1.5 psia), or less. For ballasting in non-segregated ballast tanks, and purging of the vapor spaces, the vapor pressure exemption applies to the previous liquid contained in the tank. Most bunkering (fueling of vessels) and the transfer of most hydrocarbons heavier than kerosene would be exempted. This vapor pressure exemption level is the same as used by the South Coast Air Quality Management District in their Rule 462 Organic Liquid Loading Rule.

Marine tank vessel to marine tank vessel transfer operations would be allowed to use vapor tight vapor balance systems in lieu of vapor control equipment.

The owner or operator of each affected facility would be required to obtain a copy of documentation attesting successful vapor-tightness testing within the last 12 months prior to the transfer of organic liquids into or from marine vessels. The standard would require that marine vessels be tested using Method 21 of 40 CFR part 60, appendix A, to document the vapor tightness. If a marine vessel owner or operator cannot produce the appropriate

documentation, the vessel may still be loaded, but a vapor tightness test would be conducted during the final 20% of loading. If the vessel failed the vapor tightness test, the facility retains appropriate documentation and could not load the vessel again until documentation of repairs, or proof that repairs cannot be completed unless the vessel is dry-docked, is provided. The standard also would require that a vapor-tightness test be performed during the final 50% of loading during the first loading subsequent to documented repairs. If the test is successful, the documentation is retained in the affected facility's file, and would exempt the vessel from further testing for a full year.

Vapor tightness would normally be tested by EPA Method 21 (40 CFR part 52), but an alternative test could be used. The vessel would be pressurized with dry air or an inert gas and the pressure change over time would be determined. The advantage of this test is that no VOCs would be in the tank, and therefore cannot be emitted to the atmosphere during testing.

In lieu of the vapor-tightness documentation, marine vessels may be loaded at negative pressure, i.e., with an organic liquid product tank below atmospheric pressure. Under 61.302(e)(1), Vessels loaded at negative pressure would be considered to be vapor-tight for the purposes of this standard.

The standard contains provisions for performance testing and monitoring of specific parameters for vapor balance systems, flares, boilers, process heaters, incinerators, steam generating units and carbon adsorption systems. If an owner or operator wishes to use a control device other than those specifically mentioned for compliance purposes, such as lean oil absorption or refrigeration, the standard allows the owner or operator to submit information to the Administrator describing the operation of the control systems and those parameters that would indicate proper operation and maintenance of the systems. The control device must have a weight-percent control efficiency of at least 95%.

Records of all performance tests and monitoring results would be maintained for a least two years and be readily available for inspection. The standard would require that the vapor-tightness documentation for all marine vessels be maintained in a permanent file and be available for inspection. Additionally, the standard would require the information in the file to be updated at least once annually. The standard would

also require quarterly reports for the following information: (1) Each exceedance of monitored parameters, (2) all periods when the vent stream is diverted from the control device, (3) all periods when the steam generating unit or process heater was not operating, when the control device used is a steam generating unit or a process heater, (4) if a flare is used as a control device, all periods when the pilot flame was absent, and (5) all times when maintenance is performed on car-sealed valves, when the car seal is broken, and when the car-sealed valve position is changed. The initial quarterly report would be filed within 90 days of the effective date of the standard, or 90 days after the startup date, if the startup date is after the effective date of the standard. The standard would require marine vessels to comply by January 1, 1994.

7. Other Possible FIP Control Measures

a. Introduction. During EPA's preparation of the FIP, the Agency attempted to examine every possible control measure. This section lists and categorizes some of the measures evaluated but not included in the initial FIP proposal. While EPA has not eliminated any of the measures from consideration for eventual inclusion in the FIP or other Federal action, at the time of FIP proposal EPA was unable to include these measures. Some of the measures are already being evaluated as national regulations or guidance documents to expedite ozone attainment (see section VII.B.7.b.). Other measures have been specifically assessed for possible inclusion in the South Coast FIP, but were not incorporated for the variety of reasons given below (see section VII.B.7.c.).

b. Future national measures—(1) National rulemaking. This section briefly describes anticipated national regulatory programs for reducing VOC emissions. Each is currently under review or development by EPA. These possible federal measures could include control techniques guideline (CTG) documents, alternative control technology (ACT) documents, complete regulations, or simply technical assistance and guidance from EPA.

New national EPA regulations could further reduce VOC emissions in the South Coast Air Basin if they exceed the current rulemaking schedule and emission reductions outlined in the AQMP. Federal regulations could supersede the FIP regulations if they provide equivalent or greater emission reductions. However, at this time it is not known whether these regulations

would be more or less stringent than the FIP regulations.

Table 1 below provides a summary of potential Federal measures under consideration. While Table 1. does indicate possible upcoming Federal measures, the measures and their anticipated completion dates should not be construed as commitments on the part of EPA. The South Coast AQMP takes into consideration the majority of the categories listed below, and regulatory action has already taken place, is pending, or will soon begin for most of these categories. Two source categories of potential significance in the FIP are the commercial/consumer products and pesticides categories; these are further discussed below.

TABLE 1. FEDERAL MEASURES TO REDUCE VOC EMISSIONS

Source category	Completion date
Federal Rules:	
Treatment, storage and disposal facilities (TSDF).....	3/91
Municipal landfills.....	5/91
Commercial/Consumer solvents.....	3/94
Marine vessel loading.....	3/94
Architectural/industrial coatings.....	3/94
Traffic paints.....	3/94
Coke oven by-product plants.....	8/89
Coke oven plants.....	3/92
Control Techniques Guidelines Documents:	
SOCMI distillation/reactor processes.....	9/91
Industrial wastewater.....	11/91
Wood Furniture.....	11/92
Plastic parts, business machine coating.....	5/91
Plastic parts, other.....	11/91
Heatset-web-off-set lithography.....	5/91
Petroleum wastewater.....	9/91
Autobody refinishing.....	5/91
Alternative Control Technology Documents:	
Clean-up solvents.....	11/91
SOCMI batch processes.....	11/91
Adhesives.....	11/92
Pesticide application.....	11/92
Candidates for future years.....	
Bakeries.....	1 ND
Fabric printing.....	1 ND
Metal rolling.....	1 ND
Electronics manufacturing.....	1 ND
Aerospace exterior coating.....	1 ND
Ink manufacture.....	1 ND
Wineries.....	1 ND

1 ND indicates anticipated completion date not determined.

(2) Development of a Pesticide Regulation. Because of the diverse nature of the product category and because of the limited legal authority of the SCAQMD, the South Coast is looking to EPA for assistance in developing regulations to effectively reduce emissions from this category. Therefore, any future national regulations developed by EPA may ultimately be used in the FIP.

Pesticides have traditionally been regulated for their impacts on other environmental mediums (e.g., toxicity to humans). However, because pesticides use represents one of the remaining unregulated sources of VOC emissions in California ozone nonattainment areas, this source is being investigated for potential VOC reducing strategies. VOCs can represent either the active ingredient, inert carrier ingredient, or both.

Pesticides are formulated as a dust, granule, wettable and soluble powder, aerosol, emulsifiable concentrates, or oil solutions. Application methods include aircraft spraying, ground-level spraying, and sub-soil incorporation. VOC emissions result during the application and subsequent evaporation of the pesticide.

EPA is gathering information to further evaluate the nature of pesticide emissions, potential VOC reduction techniques, and control costs. This information will be analyzed and used to develop future regulations, as warranted, for pesticides. Because of the multimedia impact of a pesticide regulation, numerous federal and state agencies will be consulted and included in any regulatory approach.

(3) Development of a Consumer Products Regulation. EPA is currently evaluating possible approaches to reducing VOC emissions from this source at a national level. Future national regulations could ultimately be used as core measures in the FIP to replace the "backstop" consumer product regulation. In addition, the California Air Resources Board is developing regulations to reduce VOC emissions from this category. Because of the diverse nature of the product category and because of the limited legal authority of the SCAQMD, the South Coast is looking to ARB and EPA for assistance in developing regulations to effectively reducing emissions from this category.

Consumer products represents a diverse source category whose products contain a variety of functions. VOCs may serve as either the active ingredient, the carrier of the active ingredient, or both. For example, most aerosol products utilize a VOC as the carrier (e.g., as a propellant). Major categories include, for example, personal care products, automotive products, household pesticides, adhesives and sealants, and aerosol spray paints.

Generally, VOC emissions are proportional to the VOC content of the product. Possible methods for reducing VOCs would include a change in

method of application, product reformulation, and product substitution. There are several regulatory approaches. The traditional control method would be to specify appropriate VOC limits for specific products or product categories, or require a particular type of application method. Other methods being considered include limiting the quantities of VOCs sold to consumer product formulators/manufacturers, developing a marketable permit system, or establishing a fee based on the VOC contained in the individual products.

In November, 1989, EPA conducted a joint industry-government symposium to discuss possible regulatory approaches, identify issues, and share information. While EPA continues to work on resolving key issues raised at the meeting, the Agency anticipates that ARB will soon propose a plan for reducing emissions from consumer products in California. The Agency is continuing to gather information on this source category and welcomes public comment on the aforementioned control strategies.

c. Other Measures—(1) Introduction. In *Delaney v. EPA*, No. 88-7368 (March 1, 1990), the Ninth Circuit ordered EPA to promulgate, for two areas in Arizona, FIPs that utilize all available control measures to attain the CO standard as soon as possible. The *Delaney* court acknowledged, however, that control measures could be deemed not reasonably available if they would not advance attainment or would cause substantial widespread and long-term adverse impact.

EPA has preliminarily determined that the measures discussed below may cause seriously disruptive and widespread economic or social effects, endanger public safety, interfere with State and local plan implementation, or require additional regulatory authority. Many of these also present unresolved concerns regarding economic and technical feasibility, and the adequacy of EPA's authority or resources to implement and enforce the measures without jeopardizing other statutory responsibilities. Uncertainties exist regarding adverse air quality impacts (e.g., where the proposed control might decrease VOC emissions but increase NO_x emissions). For these reasons, at the present time EPA is not able to conclude that these measures are available.

In addition, EPA has concluded that the Agency lacks authority under the existing Act to compel State and local agencies to adopt and implement transportation control measures (TCMs). EPA lacks the budgetary resources to

implement TCMs that demand substantial expenditures (e.g., to build bikeways or high occupancy vehicle lanes, to fund expanded mass transit, to construct traffic flow improvements, to provide mass transit and carpooling incentives, etc.). Other transportation-related controls depend upon land use planning restrictions and incentives such as general plans, bonus densities, business licenses, zoning, allocation of redevelopment funds, and fast track plan approval.

All of these transportation and land use approaches, which are options under the 1989 AQMP, are beyond the scope of EPA's authority or simply cannot be implemented, as a practical matter, by the federal government. EPA's constraints in the area of TCMs and land use particularly handicap CO attainment, where significant progress can be achieved by measures that reduce vehicle miles traveled and trips, or shift the timing or location of trips to minimize congestion and associated CO emissions. In Tier I, the AQMP expects to deliver 1343 tons per day of CO reductions from TCMs and land use measures—none of which are available to EPA. This represents more than 60% of the reductions needed to attain the CO NAAQS in the AQMP's analysis.

(2) Examples of Control Approaches Considered for Inclusion in the South Coast FIP. The following list and brief discussion shows general rule approaches or specific rules that have been assessed for possible incorporation in the FIP. However, EPA has decided, at present, not to develop the control options as FIP measures, for the reasons indicated. If in the future the options become possible, appropriate, and necessary for progress and attainment, EPA will develop and propose FIP rules.

(a) Measures that Could Interfere with State and Local Plan Implementation; Measures that May Exceed EPA's Resources to Implement and Enforce without Jeopardizing Other Statutory Responsibilities. ARB, SCAQMD and SCAG are developing hundreds of rules which are best left at the local and state levels for planning, review, workshops, hearings, adoption, implementation, monitoring, and enforcement. In earlier sections of this Notice, EPA proposes to approve most of the State and local agency commitments to continue their rule adoption process. EPA believes that it is important to preserve the integrity of the State's efforts while other federal measures are in place. Listed below are rules which have not been included in the FIP at this time because they would interfere with AQMP implementation or would, at this time, impose resource

burdens on EPA that would cause the Agency to fail to meet its other statutory responsibilities.

(1) All measures mentioned in the 1989 South Coast Air Quality Management Plan have been reviewed for EPA action. The FIP could have developed these measures in regulatory form and proposed them for federal implementation, thereby usurping the local process and duplicating the effort. If federal rules were in place mimicking local rules they would be rescinded upon adoption of a State or local equivalent rule.

(2) New Source Review regulations to restrict netting and prohibit credit of prior shutdown for on site offsets.

(3) New Source Review regulations to penalize sources for failure to obtain required permits.

(4) Enhanced motor vehicle inspection and maintenance program. Implementation costs would be enormous and wasteful for the federal government to duplicate this state program.

(5) Regulations to ensure conformity of federal projects to the SIP. The South Coast conformity process is entering into its final stages of approval.

(6) Emissions fees for stationary and mobile sources and consumer products. EPA has considered with interest the concept of emissions fees and its efficiency for industries and consumers through good pricing which internalizes negative externalities. EPA has not determined a methodology for calculating the degree of emissions reductions resulting from such changes. Until that is done, there is no assurance that such measures will achieve any particular level of emissions reduction. Under section 110(a)(2)(B) of the Act, EPA is limited to measures that it can conclude will achieve such reductions.

(7) Trip reduction program for airports (employees, passengers, and freight trips). Here again the SCAQMD and municipal and county governments are the only authorities that can practically affect this emissions category, through building upon Regulation XV. Projected growth in commercial airport traffic needs closer scrutiny at the local level.

(8) Indirect Source Review (ISR) for federal facilities. The SCAQMD has authority under the Federal and California Clean Air Acts to perform such reviews on federal facility expansion. With the district's ISR authority, new conformity guidelines, and various environmental impact reviews, it appears unnecessary for the federal government to add on indirect source review. In any case, ISR does not accelerate the attainment date; instead

it helps control the effects of growth on reasonable further progress.

(9) **Federal Facilities Trip Reduction.** Among the measures considered for inclusion in the FIP was a federal facilities trip reduction regulation. This regulation would have required federal employers in the SCAB to submit to EPA plans for reducing the number of employee commute trips, similar to the trip reduction plans required by the District's Regulation XV. Under section 118 of the Clean Air Act, agencies of the federal government must comply with local air quality measures such as Regulation XV of the SCAQMD. EPA did not include a trip reduction measure in the FIP because of concerns that it would duplicate the District's efforts under Regulation XV, and might interfere with implementation and evolution of Regulation XV. Rather than layering its own regulation on top of the District's rule, EPA feels that its resources can better be spent on helping to bring federal agencies into full compliance with Regulation XV.

EPA plans to work with the District and other federal agencies to overcome the barriers to implementation which are unique to federal facilities. Federal agencies must confront regulatory limitations when developing trip reduction plans which state and local government and the private sector do not face. The greatest obstacles seems to be the restriction against providing subsidies to encourage ridesharing and use of public transit. EPA plans to work with the agencies, the District and local government to develop innovative approaches for reducing commute trips, such as that used by the Nuclear Regulatory Commission in Montgomery County, Maryland. In that case, the Montgomery County DOT subsidizes transit passes for NRC employees in exchange for services provided by NRC, such as setting aside 175 parking spaces for rideshares. While this particular strategy may not be appropriate in the South Coast, there are other examples of innovative approaches which could be tried.

While there are a few limitations which make federal agency development of trip reduction plans challenging, there are also regulations which encourage federal agencies to reduce employee commute trips. For example, 41 CFR 101-6.3 requires that executive agencies "actively promote the use of ridesharing at all Federal facilities" and section 101-20.104-2 gives vanpool and carpool vehicles priority access to federal agency parking spaces. The Office of Personnel Management is promoting its telecommuting, or

"Flexiplace" program, which is being implemented by numerous federal agencies, including the Air Force. Finally, legislation is being introduced to make this and other programs which reduce commute trips easier for federal agencies to implement.

EPA is continuing to gather information on relevant federal and agency-specific regulations and trip reduction efforts in other areas. EPA plans to develop a strategy for assisting the District and federal agencies located in the South Coast with implementation of Regulation XV. Furthermore, once the federal approval process has been completed for Regulation XV and it becomes part of the SIP, EPA will begin active enforcement activities against non-complying federal agencies.

(b) *Measures That Could Endanger Public Safety.* These measures have the potential to jeopardize public safety because current air pollution control technology has not been demonstrated to be safe.

(1) Comprehensive regulations for fueling and engine emission control for general aviation aircraft.

(2) Comprehensive regulations for fueling and engine emission control for commercial aircraft.

(3) Regulations for minimization of emissions from aircraft on the ground.

(c) *Measures That Could Cause Seriously Disruptive and Widespread Economic or Social Effects.* (1) Limitations on vehicle registration.

(2) Fuel restrictions, including gas rationing.

(d) *Measures That Appear To Require Implementation Authority Beyond EPA's Current Authority.* (1) Controls on Outer Continental Shelf emissions sources.

(2) Regulations requiring state/local adoption and implementation of transportation control measures.

(e) *Measures That Are Not Implementable Because of Practical, Technical and Resource Constraints.* (1) Transportation Control Measures and Land Use Regulations.

Many of the measures available to a state or local government are not readily amenable to implementation by EPA because of practical and technical implementation constraints. This is particularly true in the area of transportation and land use measures. For example, an often suggested means to reduce highway emissions is to provide viable mass transit alternatives. EPA simply does not have the capability to develop, fund, construct, and run a mass transit system or high speed rail system. An EPA-promulgated air quality plan with such measures would be

unenforceable because EPA would not have the means or capability to carry it out. Projects of this nature, which are part of the South Coast plan, are most appropriately developed through the existing local/state/federal transportation planning infrastructure, which EPA wants to encourage, not supplant.

Many measures in the South Coast SIP are proposed for implementation through incentives, revisions to existing State and local governmental statutes or procedures, and other mechanisms that are beyond the scope of EPA's practical powers and authorities. For example, as the means of implementing an extremely important strategy, telecommunications, on the broadest scale possible, the SIP proposes: State and local tax incentives to encourage telecommunications; changes in State law regarding workman's compensation and liability; changes in local governmental ordinances which govern home-offices and businesses in the home; marketing programs to encourage expanded automatic banking and bill payment programs; and local government requirements that job-rich areas compensate by establishing satellite work centers in housing-rich areas.

As another example, the SIP proposes to achieve significant CO emission reduction benefits from SCAG Measure 5, Nonrecurrent Congestion Relief, which would be implemented through expanding the State highway department incident management program, installing changeable message signs and closed circuit cameras at appropriate freeway locations, improving training of incident response personnel, implementing stricter enforcement of spill cleanup regulations and unsafe load regulations, implementing truck speed restrictions during high winds, and improving freeway tow vehicle service operations. EPA is clearly ill-equipped to establish a wholly new governmental bureaucracy and infrastructure to carry out such a program, which is expected to be far more quickly and less expensively implemented by in-progress revisions to State, regional, and local governmental programs that are already in existence.

Finally, EPA could conceivably promulgate some across-the-board restraints on vehicle usage, such as gasoline rationing. These measures are much more disruptive than the proposed measures the South Coast plans to implement and, like Prohibition, are unlikely to be effectively enforced because of the lack of popular support. And without adequate mass transit to provide alternatives to reliance on

individual cars, it may be impractical and unfair to force citizens off the highways with stringent transportation control measures.

Another obstacle to EPA imposition of transportation control measures—such as emissions charges and congestion fees—is the extreme unlikelihood that EPA could ever implement and enforce such measures. To apply such measures effectively, EPA would need to be funded and equipped as a local police force, able to monitor and control millions of vehicles, and many aspects of daily life now wisely left to the jurisdiction of local authorities.

Congress in the 1977 Amendments recognized—having learned from the bitter experience of the failure of transportation control plans in the 1970's—that these types of measures were best left in the hands of state and local governments. The House of Representatives Report on a bill to amend the Act (H.R. 6161) reviewed the history of the EPA Administrator's inability to use section 110(c)(1) promulgations to achieve the statutory objectives. H. Rep. No. 6161, 95-294, 95th Cong., 1st Sess., reprinted in 4 *Legislative History of the Clean Air Act Amendments of 1977*, 2748-55 (1978). The Report noted that "this is a delicate area of Federal-State relations. Clearly, a careful balance is required as a matter of constitutional requirement." *Id.* at 2755.

The Committee Report therefore concluded that the wisest course was to adopt "an approach that is intended to involve the least possible intrusion into State affairs consistent with the primary task of protecting public health." *Id.* at 4 *Legislative History* 2755. Noting that, "as a practical matter, State and local governments are in a better position than EPA to resolve those pollution problems, which involve millions of motor vehicles, through inspection and maintenance programs and similar measures," the Report stressed the need to induce States voluntarily to adopt and implement their own transportation control programs. *Id.*

Similarly, the Committee Report on the Senate bill (S. 252) stated that the transportation control aspects of the bill had been designed to take into account that "(t)he Federal Government does not have and will not have the resources to do an effective job of running the air pollution control programs of the State." S. Rep. No. 95-127, 95th Cong., 1st Sess. 10 (1977), reprinted in 3 *Legislative History* at 1384-85. The Senate committee noted that "transportation planning", in particular "is the local involvement in the process". *Id.* at 3 *Legislative History* 1412. For the

foregoing reasons, EPA's proposal does not include various Transportation Control Measures of the type Congress would not have considered available for use by the Federal Government.

C. Regulatory FIP—Option I

1. Description of the Regulatory FIP

FIP Option I includes, in a legally enforceable form, all measures necessary to bring the SCAB into attainment of the standards by the specified attainment date. It consists of: (1) A group of core control measures, (2) stationary and area source backstop rules (Group A), (3) rail, aircraft and ship operations backstop rules (Group B), other off-highway equipment and vehicle backstop rules (Group C), and the ultra clean motor vehicle backstop program (Group D).

2. Introduction to the "Backstop" Control Measures

EPA is today proposing to promulgate Federal backstop control measure rules to reduce VOCs from sources located in the South Coast Air Basin (SCAB) and the coastal waters within three miles of Los Angeles or Orange County in California. The backstop measures are regulations which will incrementally roll back basinwide emissions from all controllable VOC categories. The purpose of these rules is to ensure that the SCAB achieves attainment of the ozone NAAQS by the year 2010 if rules scheduled for adoption by SCAQMD, CARB, and EPA (through promulgation of other FIP measures) do not achieve the VOC reductions needed to demonstrate progress toward attainment of the ozone standard.

The Group A backstop measures are proposed for implementation beginning in 1996 and continuing through 2010. However, if basinwide emissions are reduced to the prescribed levels through the adoption and implementation of SCAQMD, ARB, and/or other EPA regulations, implementation of the backstop measures would be rescinded, delayed or percent roll-back requirements reduced prior to their scheduled implementation.

These backstop measures serve as a strong incentive for State efforts, since they would be rescinded before their scheduled implementation dates if basinwide emissions are reduced to the prescribed levels through the adoption and implementation of future SIP rules. In addition, any of the core measures and the backstop measures would be rescinded upon adoption of equivalent controls by the State. EPA will strongly encourage the State to adopt core measures quickly and in a manner that

will maximize use of marketplace incentives.

Discussed below are the source categories for which backstop rules have been developed. These measures would be promulgated as complete regulations in the initial FIP but would not require emission reductions until 1996 or later. The measures for stationary and area sources would generally mandate a straight rollback of emissions from individual sources or source categories in order to accomplish necessary reductions not achieved through FIP core measures and federally approved SIP rules. Because EPA has so far been unable to develop implementable control measures for a portion of the VOC inventory, the level of control for most of the backstop measures must be sufficient to reduce 1987 or 1990 base year emissions by 90 percent.

3. Compliance Options for Backstop Control Measures

The severe backstop emission reduction requirements derive from the areawide emission reduction requirements of the FIP, rather than from the normal Agency assessments of available technologies. As such, they may be costly and disruptive, and the prospect of their implementation, in the case of inadequate State progress, should inspire successful implementation of the SIP.

Over time, the State and local agencies can develop carefully tailored rules based upon the most recent technologies and regulatory approaches. For example, the SCAQMD has a multi-million dollar technology development program to assist industry to identify and successfully apply the latest scientific approaches that can be employed to reduce pollutant emissions. Projects are underway, for example, to research technological breakthroughs in product reformulation and coatings application in order to minimize VOC emissions without compromising product quality, performance, and availability. The SCAQMD also has a heavily-funded program to facilitate the compliance of small businesses—an increasingly important and complex subject for pollution control initiatives. With these resources and, most importantly, with additional time to develop the most feasible control approaches, the State and local agencies are in a superior position to construct regulations that avoid social and economic dislocation. Finally, the State and local agencies can achieve significant mobile source emission reductions from TCMs and land use

measures that are beyond EPA's resources to implement directly.

Group A and Group C backstop rules must be issued in advance of Agency determinations regarding the feasibility of various compliance approaches. Particularly under these circumstances, EPA believes that marketplace approaches are best suited to stimulate the innovation that will speed the development of pollution control and reduce its costs. EPA has therefore designed the backstop measures to provide maximum flexibility to the affected industries by allowing each industry or group of industries to determine the best approach for meeting the required VOC reduction. Because these control measures specify a required reduction instead of an exact control technology, the affected sources can choose a strategy which best meets their situation. Potential VOC reduction strategies would include, but not be limited to, product reformulation, product substitution, control equipment, purchase of emission reduction credits, and, if necessary, production curtailments. For the appropriate categories, the backstop rule will allow use of marketable emission credits. Finally, EPA intends to foster development of clearinghouses in order to facilitate the establishment, purchase, and trading of these emission credits. In this manner, the use of marketable operating permits with declining VOC emission limits can be an economic incentive measure which can accomplish VOC emission reduction requirements at lower cost.

EPA's proposed mobile source backstop measure for ultra clean vehicles has special features designed to enable motor vehicle and fuel manufacturers to expedite progress while allowing for economic selection of control options. Section VII.G. discusses these elements, which include averaging, banking, and trading.

4. Schedule of Reductions

Assuming that the creditable State rules and core FIP rules will meet minimum progress requirements for the first 5 years, the FIP backstop rules for most source categories (those covered under the Group A Backstop rules) are designed to go into effect beginning in 1996 and to achieve uniform reductions from each category of 6% per year until the year 2010. For motor vehicles and off-highway equipment and vehicles, the backstop rules would initially apply to new units sold in 1997 (or, subject to comment, some later year). Rail, aircraft, and ship operations would be restricted starting in 1996.

The following Table presents a summary of the best estimate (point estimate) of annual costs for the FIP requirements to attain the ozone and CO NAAQS in the SCAB. VOC fuel quality rules include both lowering volatility and reformulation of gasoline (for summertime conditions from April through October). Similarly, CO fuel quality rules include lowering volatility and oxygenated gasoline (for wintertime conditions). Attainment for ozone is projected for the year 2010. The CO fuel quality rules will begin to have an effect in 1992; the CO alternative backstop rule will be effective from 2000 through 2004.

SUMMARY OF CONTROL MEASURES AND ANNUALIZED COSTS FOR FEDERAL IMPLEMENTATION PLAN

(In millions of dollars per year)

Control measure	Annual costs
VOC-Related Fuel Quality Rules	305
CO-Related Fuel Quality Rules	146
CO Alternative Backstop Rule (No-Drive Day)	789
Marine Vessel Controls	4
VOC Backstop Measures	1,335
Totals for the FIP	2,579

5. Introduction to Group A Backstops

Federal backstop rules are being proposed for the following Group A stationary and area source categories:

- Industrial and Commercial Solvents/Coatings
- VOC Emissions Associated with the Manufacturing of Products
- Disposal of Materials Containing VOCs
- Commercial Food Preparation and/or Baking
- Petroleum and Natural Gas Extraction, Processing, and Storage
- Consumer Products
- Pesticide Products
- Livestock Waste Operations
- Architectural Coatings

An overview of the backstop requirements is provided below in section VII.C.5.c. In section VIL.D., the affected source categories are discussed in greater detail and issues for which EPA is requesting public comment are presented. A more detailed description of the source categories and associated VOC emissions is presented in the Technical Support Document for the South Coast FIP Group A backstop control categories.

Once implemented, the proposed backstop measures will require annual percent emission reductions from affected sources and/or manufacturers. The backstop rules provide a flexible,

technology-forcing approach toward obtaining the additional reductions needed for attainment of the ozone standard. The measures are flexible in that a source or group of sources (consortium) can determine the best method for obtaining the required reductions. However, EPA also views the backstop measures as potentially disruptive because the necessary reductions, if fully implemented, may eventually exceed current technology for the affected sources.

The backstops call for an incremental roll back of VOC emissions from 1996 through 2010. By allowing affected parties to average emission reductions within their backstop categories, these measures provide a market-based approach for achieving the necessary reductions. However, the emission reduction requirements may become increasingly onerous for industry. Fully implemented backstop measures have the potential for social and economic disruption. For example, a source may ultimately choose to relocate out of the South Coast Air Basin if additional emission reduction alternatives become exceedingly scarce and the only remaining method of compliance is to reduce production (and therefore, emissions) below feasible levels. New nonpolluting or less polluting industries may move into the area, but reduced production and/or sources relocating to outside the Basin could potentially lead to increased unemployment and reduced revenues for the Basin.

a. *Broad-Based Emission Trading Program Measures.* Providing for flexibility in meeting VOC emission reduction requirements will help foster compatibility between air quality progress and economic objectives of Southern California. If effectively implemented, the use of a market-based approach can accomplish emission reduction requirements at a lower cost, enhance technological change, and encourage innovation among the affected industries. In theory, some sources will have an incentive to go beyond the prescribed emission reductions and thereby create a "market" for available credits for other parties. With greater VOC emission reduction possibilities comes a greater potential for control cost savings for the affected sources and increased revenues for the suppliers of VOC emission reductions.

The backstop measures are included as possible control measures because they extend far into the future and offer incremental requirements which will allow industry to anticipate methods for achieving the reductions. The fully

implemented measures are economically and technically feasible only through the development of new emission reduction technologies and through the ingenuity of industry and consumers to resolve the potentially onerous requirements and costs. Because the backstops allow a long time frame for industry to find emission reduction alternatives, it is possible that the disruption can be mitigated or eliminated through creative technological research and long-term planning for fixed capital investment.

The Environmental Protection Agency is committed to establishing a broad-based banking/trading program, including trading across source categories. While EPA has not developed at this time a fully enforceable system or strategy for handling a trading program, the basic structure of such a program can be outlined. As with any market-based approach, emission reductions must be surplus, permanent, quantifiable, and enforceable, and the program as a whole must be implementable.

The provisions set out elsewhere in this proposal establish a clearly defined baseline for sources—manufacturers, producers, distributors, etc. The baseline for establishing credits would be the appropriate emission level reflecting compliance with any adopted rules in effect prior to 1996, adjusted by a six percent annual reduction beginning in 1996. Under this broad-based program, a manufacturer, distributor, broker, etc., would be able to generate emission credits by certifying reductions below this allowable baseline. These credits can in turn be sold or traded to other manufacturers, distributors, etc., as a way of meeting the emission reductions under this program.

Under this broad-based approach, for example, a firm engaged in petroleum and natural gas extraction might purchase emission credits from a manufacturer or distributor of industrial and commercial coatings (where these products can be reformulated to eliminate their VOC content). Or, the distributor of personal care products (e.g., after-shave or suntan lotions) might replace a large number of older motor vehicles in order to postpone a costly reformulation of their product lines.

EPA has not yet resolved some of the issues associated with implementing a broad-based trading program, or the best way of integrating such a program with the proposed averaging provisions for selected product categories. Some of these issues include:

- Should the trading provision be structured similar to the lead-in-fuel program under Title II, in which

manufacturers sell credits to other manufacturers?

- Who is responsible for ensuring emissions traded are surplus, permanent, quantifiable and enforceable—EPA, the state or local agency, or individual emission sources?

- Is it appropriate for EPA to act as broker for the trading? If private brokers are allowed, should they be regulated or licensed by EPA?

In addition to this broad-based trading approach, EPA is proposing rules allowing averaging within specific product categories—e.g., consumer products, pesticide products, and architectural coatings—that provide for emission trading within the product category.

These provisions are structured to allow manufacturers to form consortia to pool their baseline VOC amounts and thus average their actual reductions each year to meet the 6 percent target. These categories were chosen for averaging provisions because the regulated entities were homogeneous enough—and thus more likely to already be affiliated with an industrial association—so that formation of consortia would be relatively easy.

The rules as proposed would allow trading within each product category. These categories account for approximately 70 percent of base year stationary source emissions. This averaging approach does not allow trading across categories, however, substantially limiting trading opportunities.

Since EPA intends to expand the trading across source categories, EPA solicits comments on (a) whether and how a broad-based trading program can be accomplished for and across categories; (b) ways in which trading opportunities could be expanded; and (c) mechanisms to ensure that the necessary emission reductions are achieved and enforceable.

These backstop rules, as noted elsewhere in this notice, will not actually be imposed until at least 1996. EPA will publish a supplemental proposal after these implementation issues have been studied and after reviewing comments on this present proposal. Therefore, there will be sufficient time to incorporate trading provisions into the program prior to the effective date of the rules.

- b. *Issues.* To be effective and verifiable, the VOC emission reductions would need to be validated through an enforceable mechanism such as a periodic permit issuance and renewal process (e.g., marketable operating permits). While EPA is suggesting a market-based approach as a possible

means of compliance with the backstop requirements, a fully enforceable system or strategy for handling an emissions trading compliance method has not been developed at this time. Therefore, given the preference by some sources for a market-oriented regulation and given the additional resource burden a market-based strategy would place on EPA (for implementation, oversight, and enforcement of the program), we are encouraging comments and suggestions on potential strategies for a federally enforceable emissions trading approach for the backstop rules. As with any market-based approach, emission reductions must be surplus, permanent, quantifiable, and enforceable.

EPA has not yet resolved some of the issues associated with implementing a broad-based trading program, or the best way of integrating such a program with the proposed averaging provisions for selected product categories. Some of the issues included:

- c. *Overview of Rules.* This overview explains the similarities and differences between the Group A backstop rules for each source category. The measures are modeled after three different regulatory strategies or "formats" which are also discussed within this section.

- (1) *Similarities.* All of the rules contain sections discussing definitions, applicability, specific provisions, reporting, recordkeeping, testing, and monitoring requirements. The definitions section of a rule contains the definitions which apply only to the rule. The applicability section specifies the area to which the rule applies, who is subject to the rule, and references the sections and/or paragraphs of the rule to which subject persons must comply.

The specific provisions section of the rules specifies applicable VOC limitations and requires subject persons to submit baseline VOC emissions data to the EPA. Once implemented, the backstop rules would require affected facilities to annually reduce VOC emissions by six percent beginning in 1996 and ending in 2010 to achieve up to a 90 percent VOC reduction overall. It is expected that subject facilities would continue to maintain VOC levels at 2010 levels after 2010. EPA may reduce the annual percent VOC reduction requirement during one or more years if rules adopted by the SCAQMD, CARB, and EPA (through the promulgation of federal core rules) achieve the VOC reductions needed to demonstrate reasonable further progress toward attainment of the ozone standard.

The purpose of the reporting, recordkeeping, and testing and monitoring requirements of the rules is

to ensure the enforceability of the rules. The reporting section specifies annual reporting requirements and the recordkeeping section requires subject persons to maintain, for at least three years, all information necessary to demonstrate compliance with the VOC limitations. The testing and monitoring section of the rules require persons to test and/or install monitoring equipment to demonstrate compliance with the VOC limitations as requested by EPA.

In addition to the nine proposed Group A backstop rules, EPA is proposing a General Provisions Section which will be applicable to the Group A measures. The General Provisions Section includes definitions applicable to all of the backstop rules and test methods and procedures referenced in the testing and monitoring sections of most of the backstop rules.

(2) *Differences.* Each backstop measure is based on one of three regulatory strategies referred to as Format #1, #2, or #3. Format #1 would require the owners or operators of subject facilities to incrementally reduce total VOC emissions from their facility. Format #2 would require manufacturers of products sold, offered for sale, supplied, or distributed in the SCAB to reduce the total VOC emissions (or mass) associated with the use of their products. Format #3 would require distributors of products in the SCAB to reduce the total VOC emissions (or mass) associated with their products. A summary of each of these three formats is provided below.

- **Format #1:** Reduce allowable VOC emissions at the source/facility.
- **Format #2:** Manufacturers reduce total VOC emissions associated with the sum of all products marketed in the South Coast Air Basin.
- **Format #3:** Distributors reduce total VOC emissions associated with the sum of all products marketed in the South Coast Air Basin.

(3) *Backstop Format #1:* Format #1 is designed to regulate and limit VOC emissions associated with process and area sources. Examples of process sources include extraction, manufacturing, and fabrication operations. Examples of area sources include the use of solvents and paints (not directly used in extraction, manufacturing, or fabrication operations) and VOC waste disposal and storage sites. Backstop rules utilizing this format are proposed for the following Group A source categories:

- Industrial and Commercial Solvents/Coatings
- VOC Emissions Associated with the Manufacturing of Products

- Disposal of Materials Containing VOCs
- Commercial Food Preparation and/or Baking
- Petroleum and Natural Gas Extraction, Processing, and Storage
- Livestock Waste Operations

This regulatory format would require the owners and operators of subject facilities to calculate total VOC emissions from all process and area emissions sources at the facility for the base year 1987 and then reduce base year emissions by six percent per year from 1996 through 2010. Owners or operators could use a variety of methods to reduce VOC emissions by installing new control equipment and/or increasing control efficiency of existing equipment, process modifications or substitutions, or reducing operating schedules.

The specific provisions section of the Format #1 backstop rules would require each owner or operator of a subject facility to prepare a VOC emission reduction compliance plan for the years 1996 through 2000 and submit the plan to EPA by January 1, 1993. Subsequent plans to cover the years 2001 through 2010 may be required at a later date. EPA could comment on any plan and request additional information if needed to adequately evaluate the requirements of the plan. Each owner or operator would submit a revised plan to EPA within 30 calendar days of receipt of EPA comments. The source would then comply with the provisions of the most recent plan submitted to the EPA. The owner or operator would include the following information in the plan:

- Name, title, address, and telephone number of the owner or operator of the facility, and of each person responsible for preparing the plan;
- An estimate of baseline VOC emissions from all emissions sources at the facility;
- Methods to be employed to achieve the annual percent emissions reduction;
- Test or demonstration methods used to demonstrate achievement of the VOC emissions reductions; and
- Projections of annual VOC emissions for each source through the year 2010 after application of the VOC reduction methods described in the plan.

EPA is proposing to require submittal of the plans three years prior to the effective date of the limitations of the rules (i.e., January 1, 1996) to obtain a more accurate estimate of baseline VOC emissions, to identify subject facilities, and to encourage subject facilities to develop a comprehensive, long-range control strategy for reducing VOC emissions.

The submittal of baseline VOC emissions data in 1993 will provide the EPA with more accurate, facility-specific data for evaluating reasonable further progress toward attainment of the ozone NAAQS and will allow the EPA to evaluate whether the backstop rules should require a higher or lower VOC reduction than the proposed six percent annual reduction. In addition, this information is important to EPA because the 1987 SCAQMD emissions inventory only included facilities which emit more than 10 tons of uncontrolled VOC emissions per year. Hundreds of small, uninventoried facilities are located in the SCAB which, taken together, account for a significant source of VOC emissions. Although the database contains area source emissions estimates to account for uninventoried sources classified under some of the source categories, the area source emissions estimates are based on the amount of solvent or coating used in a county rather than emissions associated with individual facilities in that county.

EPA will also use the emission reduction plans submitted to identify the number and location of subject facilities. This determination is needed to estimate resource requirements for conducting facility inspections for enforcement of the backstop rules. Enforcement personnel will also use the plans to prepare for facility inspections.

The backstop rules based on Format #1 would require baseline emissions and emissions reductions to be calculated on a daily basis. This requirement is consistent with EPA policy and prevents owners or operators from achieving either all or part of the required VOC emissions reductions during the winter months of the year during which the SCAB experiences lower ambient ozone levels. The rules require baseline emissions to be determined using the lower of the actual or allowable emissions rate and the actual production, through-put, or usage level. If daily emissions records are available for the calendar years 1986 and 1987, baseline emissions would be based on the median value of daily emissions recorded for the two-year period. If daily emissions records are not available, baseline emissions would be based on the average daily emissions value calculated for the two-year period. The purpose of using the median or average value for calculating baseline emissions is to determine the representative emissions of the affected facility.

Owners or operators of facilities which would be subject to the VOC limitations of the rules would also be

subject to annual reporting requirements.

Owners or operators would certify to the EPA by March 1 of each calendar year, beginning in 1997, that they have complied with all of the requirements of the rule for the previous calendar year. Owners or operators would also submit documentation of the methods used to achieve the VOC reductions. The documentation must be presented in a format equivalent to the methodology presented in a table provided in each rule. A suggested reporting format specified in the rules will ensure that owners or operators report all of the information needed to evaluate compliance with the rule in a consistent manner.

Backstop rules for three of the source categories contain exemption levels to minimize potential impacts on small businesses. The backstop rules would require owners or operators of exempt facilities to certify to the EPA by January 1, 1995, that they are exempt from the VOC limitations of the rules and to submit calculations which demonstrate the VOC emissions from their facility will not exceed the exemption level. If a facility exceeds the exemption level on and after January 1, 1995, the source must notify EPA within thirty days that the exemption level was exceeded. The source would then comply with the VOC limitations of the rule beginning on January 1 of the calendar year following the exemption level exceedance. Once an exempt facility exceeds the exemption level, it would always be subject to the VOC limitations of the rule.

(4) *Backstop Format #2.* Format #2 would require the owners or operators of facilities which manufacture products which will be sold, offered for sale, supplied, or distributed in the applicable control area on and after January 1, 1996, to reduce the overall VOC emissions associated with products marketed in the SCAB. Manufacturers of these products could either reduce the overall VOC content from individual products or a pool of products, and/or limit the distribution of high VOC products. Backstop rules utilizing this format are being proposed for the following source categories:¹

- Consumer Products;
- Pesticide Products;²
- Architectural Coatings.

The specific provisions section of the backstop rules based on this format would require each person or consortium of persons who manufactures consumer products, pesticide products, or architectural coatings to register with the EPA by January 1, 1993. The purpose of allowing a consortium of persons to comply with the VOC limitations of the rules would be to minimize the impact of the VOC limitations on an individual product or person. For example, a person who manufactures one or two products might pool resources with other manufacturers to comply with the VOC limitations of the rule.

Persons who manufacture products to be sold, offered for sale, supplied, or distributed in the control area on or after January 1, 1996, would be subject to the rules regardless of whether they are located in or outside of the control area. Persons who are located in the applicable area and manufacture products which will be only be sold, offered for sale, supplied, or distributed outside of the control area would be exempt from the requirements of the rules. (However, the aforementioned sources may be subject to the "VOC Emissions Associated with the Manufacturing of Products" backstop measure.)

Each manufacturer or consortium of manufacturers would register with the EPA as a manufacturer by submitting the following information:

- The name, title, address, and telephone number of the owner or operator of the manufacturing facility, and of each person responsible for preparing the information for registration.
- The name, address, and telephone number of each facility where products will be manufactured.
- The types of products classified under the product categories specified in the rules and calculations of the total baseline VOC mass for each product category.

EPA will attempt to resolve remaining pesticide issues prior to final approval of the South Coast FIP and/or the effective dates of the proposed backstops.

² For pesticide registrants covered under the proposed Pesticide Products backstop measure, the primary requirements will apply to pesticide "registrants" instead of manufacturers. Readers of the Backstop Format #2 discussion, which follows, should be aware of substituting the terms registrant and as applicable. For further details on the proposed regulatory language and requirements, refer to Pesticide Products backstop measure printed elsewhere in this notice.

Manufacturers of consumer products would calculate the total VOC mass for all products classified under each product category for the baseline year 1988 and then reduce the total VOC mass for each category beginning in 1996 and ending in 2010. For pesticide products, EPA is proposing to use a 1990 baseline year.

The year 1988 was selected as the year for calculating the baseline VOC mass for consumer products because ARB recently requested the consumer products industry to submit baseline VOC data on a product-by-product basis. Data submitted to EPA will provide a comprehensive information source on a product-by-product basis. The year 1990 was selected as the year for calculating the baseline VOC mass for pesticide products because new pesticide use reporting requirements implemented in 1990 by the California Department of Food and Agriculture (CDFA). The year 1988 was selected for calculating the baseline VOC mass for architectural coatings for consistency with the ARB inventory responses recently submitted by this industry to ARB. All of these rules specify equations for calculating the baseline VOC on either a weight-weight or a weight-volume basis.

The specific provisions section of the rules based on Format #2 also contains registration³ requirements for each person who packages or distributes products which will be sold, offered for sale, supplied, or distributed in the control area on or after January 1, 1996. Each person who packages or distributes products would be required to register with the EPA as a registered packager or distributor by January 1, 1994. Each person would submit the name, address, and telephone number of each packaging or distribution facility and the name, title, address, and telephone number of each person responsible for distributing products. The rules also specify that no person shall package or distribute any product which will be sold, offered for sale, supplied, or distributed in the control area on and after January 1, 1996, unless

³ For manufacturers subject to the requirements of FIFRA, the Format #2 "registration" should not be confused with the registration process of FIFRA. The Pesticide Products backstop uses the term "certification" in place of registration. The Format #2 "certification" would be with EPA's Office of Air and Radiation for the purposes of quantifying VOC emissions and identifying affected sources. Existing registration requirements under FIFRA would still apply independent of the regulatory requirements of a backstop measure. EPA is investigating how the existing FIFRA requirements might be utilized within the South Coast FIP to avoid duplication of efforts for the Agency and the affected sources.

¹ The three proposed Format #2 categories include some products currently regulated under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). EPA is currently studying ways to utilize as much as practicable the existing regulatory requirements of FIFRA. However, because of the limited time available to meet the court-ordered deadline for this proposed notice, numerous issues describing the interface between FIFRA requirements and the proposed backstop measures have not been fully addressed in today's notice.

the person obtains the product formulation or product from a manufacturer or consortium of manufacturers registered with EPA. The purpose of these requirements is to prevent packagers and distributors from obtaining products from manufacturers that do not comply with the VOC limitations of the rule.

EPA could request additional information needed to fulfill the registration requirements for manufacturers, packagers, and distributors after they initially register with EPA. Manufacturers, packagers, and distributors would submit the additional information requested within 30 calendar days of receipt of the request.

Persons who package or distribute consumer products or architectural coatings would also have to comply with the labeling requirements of the consumer products or architectural coating rules. However, all products registered under FIFRA would be exempt from the labeling requirements. The labeling provisions require each person who packages or distributes consumer products to affix a label to each container which displays the date on which the container was filled, the VOC content of the product in units of percent by weight, the product category under which the product is classified, and a declaration that the product was manufactured, packaged, and/or distributed in accordance with the requirements of the rule. If a bar code or any other closed-code dating system is used to indicate the date on which the container is filled, an explanation of the code must be filed with EPA by the date on which the product bearing the code will be sold, offered for sale, supplied, or distributed in the control area.

The annual reporting requirements of the Format #2 rules only apply to manufacturers. Manufacturers of consumer products, pesticide products, and/or architectural coatings would submit a report to the Administrator by March 1 of each calendar year beginning in 1997 which certifies that they were in compliance with all of the requirements of the rule for the previous calendar year. Manufacturers would also have to submit documentation of the methods used to achieve the VOC reductions; the test or demonstration methods used to demonstrate achievement of the VOC limitations; projections of total VOC mass for each product category for the next five-year period; and the name, address, and telephone number of each facility to which each product was initially sent for packaging or distribution.

The recordkeeping requirements of all three rules apply to manufacturers, packagers, distributors, retailers, and wholesale purchaser-consumers. Manufacturers would have to maintain all records necessary to demonstrate compliance with the VOC limitations. Packagers and distributors would have to keep copies of manufacturer registration forms and any other information necessary to demonstrate that product formulations or products were obtained from a manufacturer registered with the Administrator. Distributors would also have to keep records on the name and address of each retailer and wholesale purchaser-consumer to which each product is initially distributed. Each retailer and each wholesale purchaser-consumer who sells, supplies, offers for sale, or uses any product in the control area on and after January 1, 1996, would have to keep records to demonstrate that each product was obtained from a packaging or distribution facility which is registered with EPA. The purpose of these recordkeeping requirements would be to provide enforcement personnel with the information needed to determine compliance with the rules.

The testing requirements of all three rules apply only to manufacturers. Manufacturers would have to test products to verify the VOC content of the products as requested by EPA.

(5) *Backstop Format #3.* This regulatory format only applies to the backstop rule for the industrial solvent and industrial or commercial coating source category. This backstop rule is being proposed as an alternative to the Industrial and Commercial Coatings/Solvents rule described under Format #1.

EPA is requesting public comments on whether the Format #3 rule should be promulgated in place of the Industrial and Commercial Solvents/Coatings rule based on Format #1.

The specific provisions section of the Format #3 rule would require distributors of any industrial solvents or commercial coatings and solvents to limit the total VOC mass associated with these products by six percent per year from 1996 through 2010. Format #3 is different from the other Format #1 and #2 approaches because the burden of reducing the VOC mass of solvents and coatings falls on distributors instead of the subject facilities or manufacturers. Distributors could either limit the supply of solvents or coatings distributed in the control area and/or work with sources to encourage manufacturers to reduce the VOC

content of the solvents and coatings which they distribute.

Distributors would register with EPA by January 1, 1993. Distributors would register by submitting information on their name, address, and telephone number; an estimate of the total baseline VOC mass associated with all of the solvents and/or coatings distributed in the control area; and projections of the VOC mass reductions they must achieve for the years 1996 through 2010. The baseline VOC mass would be based on the maximum annual VOC mass associated with the distribution of solvents and coatings over the two-year period (i.e., 1987 and 1988). New distributors or persons wishing to become registered distributors after the registration deadline could purchase the distribution rights from another registered distributor and assume the baseline VOC mass and VOC limitations of that distributor.

The specific provisions section would also require any commercial user who intends to purchase industrial solvents or industrial or commercial coatings for use in the control area on and after January 1, 1996, to purchase such products from registered distributors. Residential users would be exempt from this requirement. Both distributors and commercial users would comply with the recordkeeping requirements of the rule. Distributors would keep all information necessary to document the amount of and the VOC mass associated with any solvents or coatings distributed in the control area and records of the commercial users to which the solvents or coatings are distributed. Commercial users would keep records to show that they purchased solvents or coatings from registered distributors. Distributors and commercial users would keep records at the facility for three years.

5. Introduction to Group B Backstops Rail, Aircraft, and Ship Operations

Emissions within the South Coast Air Basin from rail locomotives, commercial and general aircraft, and large ocean going ships are significant in relation to 2010 allowable VOC emissions, and must at least be limited in growth if not reduced from current levels. It is not practical to set emission limits on the national and worldwide fleet of locomotives, aircraft, and ships as part of the FIP. Also, EPA lacks legal authority to limit growth by regulating terminal expansions, since this would be indirect source review. Because freight and passenger transportation in and out of the Basin is so important to the Basin's economy, and probably

especially to its ability to adjust to the Group A backstops if they are implemented, any controls in this area must provide maximum market-based flexibility to get the most economic benefit from each allowed ton of emissions.

The backstop program for Group B therefore takes the form of annually renewed, marketable EPA permits to enter the Basin or use a terminal. Permits will be denominated in VOC tons, and EPA will at a later date issue formulas for calculating the tons of VOC allowed for each type of source and operation. Permits will be initially allocated to owners of sources that entered the Basin in 1989 in proportion to their VOC tons emitted that year. The effective date will be proposed to be 1996. When permits are renewed each year, EPA may fractionally increase or decrease them to allow some growth or to achieve some reduction. EPA will seek comment on a growth rate between plus and minus 1 percent per year, starting in 1996 from the 1989 base. (The tradeoff for a stringency choice within this range will be the stringency of the Group C backstop).

For the most part, the affected estimates will be sizable transportation corporations. Commercial airline companies will receive and consume most of the permits. Smaller firms and private individuals may be affected by the applicability of the permit program to general aviation, but all current users will receive entitlements and new users will have ample time to plan.

Like the Group A backstops, the Group B program will offer all possible flexibilities to comply, including the use of lower emitting engines. The program will be loosened or withdrawn as local efforts to adopt approvable measures are completed.

6. Introduction to Group C Backstops Off-Highway Equipment and Vehicles

Included in this group are smaller marine vessels (tugs, fishing boats, etc.), pleasure boats, farm and construction equipment, utility equipment, off-road motorcycles, buggies, and four wheel drive vehicles, and commercial and residential lawn and garden equipment. These are powered by large or small diesel, gasoline, or LPG engines. The VOC emissions from the group must be reduced to allow attainment. Because of the hundreds of thousands of owners and operators involved, the only feasible approach is to set emission limits for new units. The backstop rule will propose limits that will require controls nearly as effective as those on motor vehicles. Because of the simpler duty cycles, the controls should be able

to be less sophisticated and costly, but will likely include oxidation catalysts on many gasoline engines. In applications requiring very small engines, the standards may strongly encourage electrification; the SCAQMD plans to directly mandate electrification of such applications.

Because of the need to develop new control hardware, EPA will seek comment on effective dates between 1997 and 2002. This may not be soon enough to achieve full turnover by 2010, so EPA will seek comment on the need for and methods to prevent use of older models during and after 2010.

7. Introduction to Group D Backstops Ultra Clean Motor Vehicle Backstop Program

The fourth type of backstop rule (Group D) is an ultra clean motor vehicle program. This program will set very stringent yet feasible composite VOC and CO emissions standards for all categories of on-road new motor vehicles, effective sometime between 1997 and 2002. The standards will achieve an 84 percent reduction in 2010 compared to 1987, even with expected growth. However, use of non-complying vehicles must be prevented or offset by sale of even cleaner vehicles. While EPA proposes to limit the program to the SCAB, this notice seeks comment on several alternatives for early retirement measures and anti-migration approaches including statewide application of the ultra clean vehicle requirements. This critical measure will allow EPA to demonstrate timely ozone and CO attainment without the need to reduce vehicle use (e.g., through gas rationing).

D. Group A Backstops: Stationary and Area Source Categories

The following sections provide a brief description of each Group A backstop measure and discusses issues on which the EPA is requesting public comment.

1. Industrial and Commercial Coatings/Solvents and Architectural Coatings

a. *Source category description.* The Industrial and Commercial Coatings/Solvents source category includes emissions from dry cleaners; degreasing operations; and all types of coating and/or solvent clean-up operations. Examples of coating operations include, but are not limited to, aerospace component coating; automobile and light-duty truck assembly-line coating; can and coil coating; paper, fabric, and film coating; flatwood products coating; large appliance coating; magnet wire coating; marine vessel coating; metal and wood furniture coating; miscellaneous metal parts and products

coating; motor vehicle and mobile equipment refinishing; plastic parts coating; and graphic arts (printing) operations.

The Architectural Coatings source category includes coatings applied to the interior and exterior surfaces of stationary structures and their appurtenances, mobile homes, pavements, and curbs. This category contains a range of coatings which includes stains, primers, industrial maintenance coatings, sealers, and other coatings currently regulated under South Coast Rule 1113—Architectural Coatings. Architectural coatings are widely used in the building/construction and commercial painting industries. However, these coatings are also commonly used in residential and industrial settings.

As described earlier, the industrial and commercial solvents/coatings rule is proposed under two alternative formats (#1 and #3). Format #1 would regulate all VOC emissions (including clean-up solvents and architectural coatings) from industrial and commercial solvent/coating facilities located in the affected area. Approximately 60 percent of the emissions associated with this source category (excluding architectural coating emissions) were area source emissions not directly related to the facilities in the South Coast inventory.⁴ To identify an exemption level which would minimize the impact of the rules on small businesses without compromising the 90 percent VOC reduction target of the rule, a comprehensive exemption level analysis was performed to estimate the total number of industrial and commercial solvent/coating facilities affected. The exemption level analysis is included in Appendix A of the TSD.

Because of the uncertainties discussed in the exemption level analysis, it is difficult to determine the exact exemption level and percent VOC reduction needed to achieve a 90 percent overall reduction in point and area source emissions. This backstop rule will require owners or operators of subject facilities to submit baseline emissions by January 1, 1993. This information will provide a more accurate emissions inventory for evaluating exemption levels and VOC reductions. For the purpose of further evaluating the appropriate exemption

⁴ The South Coast emissions inventory typically includes a list of sources with emissions greater than ten tons per year. Smaller sources emitting less than ten tons per year are accounted for under area source category.

level, a 20 pounds per day (PPD) exemption level and a 90 percent VOC emissions reduction was selected for all coating and dry cleaning facilities. The 20 PPD emissions level is a typical value at which subject facilities would account for 95 percent of the point and area source inventory and at which small business impacts could be minimized. A total of 9,220 dry cleaning and coating facilities were estimated to be located in the control area from County Business Pattern data. Approximately 1,210 coating facilities and 860 dry cleaning facilities are estimated to exceed the 20 PPD uncontrolled emissions level. About 1,410 (60 percent) of the dry cleaning facilities and 5,740 (60 percent) of the coating facilities would be exempt from the backstop measure. A more accurate analysis will be performed after baseline data are received in 1993 to determine if separate exemption levels should be established for individual dry cleaning or coating source categories, or to determine if exemption levels could be increased to minimize impacts on small businesses.

The results of the exemption level analysis indicated that small degreasing operations should not be exempted from this backstop rule. The small cold and open-top vapor degreasing operations represent a significant source of emissions and are currently controlled in other California districts (e.g., Bay Area Air Quality Management District). Although current SCAQMD rule exempt small conveyorized degreasing operations, there was only one large conveyorized degreasing operation in the SCAB emissions inventory database. The number of small conveyorized degreasing operations could not be determined from County Business Pattern data or other data sources. Small motor vehicle and mobile equipment refinishing facilities were not exempted from the VOC limitations of the rule because all of these facilities are subject to the SCAQMD's Rule 1151 for automobile refinishing. About 300 degreasing and 1,300 motor vehicle and mobile equipment refinishing facilities were estimated to be subject to the FIP rule.

A separate rule based on Format #2 is being proposed for architectural coatings because these coatings are applied to a variety of industrial, commercial, institutional, and residential structures throughout the control area. The Architectural Coatings backstop would apply to all manufacturers and formulators of architectural coatings (regardless of whether they are located in or outside

the control area) if their products will be sold, offered for sale, supplied, or distributed in the control area on and after January 1, 1996.

As discussed above, EPA is proposing a Format #3 rule as an alternative to the Format #1 Industrial and Commercial Solvents/Coatings rule. The alternative Format #3 rule would require distributors who intend to distribute solvents and coatings for use in the control area on and after January 1, 1996, to limit the VOC mass associated with the solvents and coatings distributed within the affected area.

(b) *Issues.* The major issue on which the EPA is requesting comment is whether the backstop rule for the Industrial and Commercial Solvents/Coatings measure should be based on Format #1 or Format #3. A backstop rule based on Format #1 would provide the owners or operators of facilities using industrial and commercial solvents/coatings the most flexibility in complying with the rule. Owners or operators could use a variety of methods to comply with the rule. Such methods include installing new emission control systems or increasing the efficiency of existing control devices, process modifications or substitutions, or limiting the amount of solvent used at the facility. Process modifications include installing new, more efficient processes, increasing the efficiency of existing processes, or limiting process operating time. Substitutions include the replacement of solvent-based coatings with low-VOC coatings. Although industrial and commercial solvents/coatings facilities would not be subject to the limitations of a rule based on Format #3 (which is intended for distributors), the Format #3 alternative could severely limit solvent and coating supplies to the extent that facilities may have to limit production or discontinue operation. Recordkeeping costs for solvent use facilities are expected to be lower under Format #3 than Format #1 because solvent use facilities would only keep records of the distributors from which they purchased solvents or coatings.

Although the total number of distributors that would be subject to a rule based on Format #3 is unknown at this time, the total number of distributors probably would be significantly lower than the number of facilities subject to a rule based on Format #1. Therefore, it is possible that costs associated with rule enforcement and the information submitted to register with the EPA would be lower for the rule based on Format #3. However, the rule based on Format #3

would affect distributors throughout the United States, which may cause the rule to be more difficult to enforce than the Format #1 approach (which is facility specific). It is difficult to compare and contrast the merits of the two formats without knowing how many facilities would be subject to the VOC limitations and recordkeeping and reporting requirements of each format. Therefore, the EPA is requesting additional comment and information on the number of facilities that could be subject to the rules based on Format #1 and Format #3.

EPA is requesting comments on potential methods for adjusting backstop requirements for sources which barely exceed the exemption levels. For these small sources, it will become increasingly onerous to reduce emission levels. EPA is considering that for these sources, initial emission reduction requirements become effective at a later date, but within the 2010 deadline.

2. VOC Emissions Associated with the Manufacture of Products

a. *Source category description.* The backstop rule for this source category would regulate VOC emissions from manufacturing and fabrication processes used to produce organic chemicals, gases, rubber and miscellaneous plastic products. Examples of products manufactured or fabricated by processes that potentially would be covered by this rule are shown below.

- Industrial and agricultural organic chemicals and gases. Industrial organic chemicals include, but are not limited to, gum and wood chemicals, cyclic organic crudes and intermediates, organic dyes and pigments, and 280 organic chemicals (listed in Table 1 of the TSD).

- Agricultural organic chemicals include, but are not limited to, pesticides, livestock dips, soil conditioners, and fertilizers; plastic materials, synthetic resins, synthetic rubber, elastomers, and cellulosic and manmade fibers.

- Drugs which include, but are not limited to, medicinal chemicals and botanical products, pharmaceutical preparations, in vitro and in vivo diagnostic substances, and biological products.

- Soaps; detergents; cleaning, polishing, and sanitizing preparations; surface active agents, finishing agents, sulfonated oils, and assistants; and perfumes and cosmetics.

- Food additives and sweeteners.
- Paints, varnishes, lacquers, enamels, inks, primers, paint removers, thinners, stains, shellacs, cleaners,

putty, coatings, adhesives, fillers, sealants, explosives, and carbon black.

- Fabricated rubber and miscellaneous plastics products including, but not limited to, tires and inner tubes; rubber and plastic footwear, hose, belting, gasket, packing, and sealing devices; and molded, extruded, and lathe-cut mechanical rubber goods.

The backstop rule for this source category contains an exemption level of 10 lbs per day of VOC emissions. This exemption level was based on an analysis of point source VOC emissions for 297 facilities which were included in the SCAB emissions inventory database. The database did not contain area source emissions estimates for this source category. The exemption level analysis of point source emissions is included in appendix B of the TSD.

3. Disposal of Materials Containing VOCs

a. Source category description. The backstop rule for this source category would regulate VOC emissions at organic waste disposal facilities. Organic waste disposal facilities include any facility which is operated as a business or owned by a state or municipality and is used to treat, store, or dispose of organic wastes that contain VOCs or to reclaim or recycle organic compounds or gases from organic wastes that contain VOCs. Examples of organic waste disposal facilities include: Landfills; publicly owned treatment works (POTWs); hazardous waste treatment, storage, and disposal facilities; and sewage sludge, solid waste, and hazardous waste incinerators. Waste solvents, coatings, and other products which contain VOCs are the major source of VOC emissions at these facilities. The VOCs contained in consumer products which are flushed to POTWs after use may be a major source of VOCs at POTWs. The SCAB emissions inventory only contained area source emissions estimates for POTWs. The AQMP did not contain any information on the number, size, and location of organic waste disposal facilities. Therefore, an exemption level was not included in the backstop rule so EPA could collect baseline emissions data for all organic waste disposal facilities located in the control area. An exemption level for the rule will be evaluated after EPA receives the baseline data in 1993.

b. Issues. EPA is requesting any information which can be used to characterize the number, size, and location of, and VOC emissions from organic waste disposal facilities located in the control area. EPA is also requesting public comment on the need

for this backstop rule because the reductions associated with the industrial and commercial solvent use and consumer and pesticide products rules may result in a reduction in VOC emissions at organic waste disposal facilities.

4. Commercial Food Preparation and/or Baking

a. Source category description. The backstop rule for this source category would regulate VOC emissions from commercial food preparation facilities. Commercial food preparation facilities include commercial bakeries and commercial charbroiling, fruit and vegetable preservation, grain mill production, malt beverage production, vegetable oil production, and wine- or brandy-making facilities, and restaurants involved in any of the aforementioned activities. A total of 950 commercial food preparation facilities were estimated to be located in the control area from County Business Pattern data. The SCAB emissions inventory database contained emissions data for 69 facilities which only accounted for 4 percent of the total emissions for this source category. Area (uninventoried) sources accounted for 96 percent of total emissions. The backstop rule for this source category contains an exemption level of 10 lbs per day of VOC emissions. The proposed exemption level was based on an analysis of the point and area source VOC emissions contained in the SCAB database. The exemption level analysis is included in appendix C of the TSD.

b. Issues. EPA is requesting comments on potential methods for adjusting backstop requirements for sources which barely exceed the exemption levels. For these small sources, it will become increasingly onerous to reduce emission levels. EPA is considering that for these sources, initial emission reduction requirements become effective at a later date (e.g., 2003), but within the 2010 deadline.

5. Petroleum and Natural Gas Extraction, Processing, and Storage

a. Source category description. The backstop rule for this source category would regulate VOC emissions from all VOC sources at oil and natural gas drilling wells (both on-shore wells and wells located in the coastal waters within three miles of Orange and Los Angeles County); oil refineries; and petroleum, gasoline, and natural gas storage facilities. Storage facilities include extraction and refinery facilities, bulk gasoline plants and terminals, or any other facility which distributes petroleum, gasoline, or natural gas to

retail outlet and wholesale purchaser-consumer facilities.

The intent of this rule would be to reduce VOC emissions associated with petroleum and natural gas production without limiting gasoline supplies. Retail gasoline service stations are exempted from this rule because these facilities already are complying with Stage I and II controls, and the only other method these facilities could use to comply with this rule would be restrictions on the amount of fuel throughput.

b. Issues. The EPA is undecided on whether wholesale purchaser/consumers should be subject to the VOC limitations of this rule. A wholesale purchaser/consumer includes any business which is the ultimate consumer of petroleum, natural gas, or gasoline. Examples of wholesale purchaser/consumers include airports and fleet vehicle operations. Public comment is requested on potential control methods for wholesale purchaser/consumers (other than restricting the amount of petroleum, natural gas, or gasoline purchased) which could be applied under the rule.

6. Consumer and Pesticide Products

a. Source category description. Because of similarities in formats and issues, both the consumer products and pesticide products measures are discussed together within this section. Issues associated with FIFRA requirements are further discussed below in section c.

The backstop rule for consumer products would require any person or consortium of persons who manufactures consumer products to classify each consumer product under one of seven categories. The seven proposed categories include: automotive, industrial, and mechanical equipment; consumer pesticide; food; household; aerosol paint and finish; personal care; and other products. The "other" product category would include only products which could not be classified under one of the six other categories. For the purposes of the consumer products backstop, all consumer products regulated under FIFRA would fall under the consumer pesticide category.

The consumer products and pesticides backstop measures and suggested product categories represent broad classifications of products which have common end uses. These proposed classifications⁵ were chosen for

⁵ EPA acknowledges that this proposed classification concept may cause initial concerns for
Continued

consistency with current emission inventory methodologies used by ARB and the SCAQMD.

The backstop rule for pesticide products includes both agricultural and non-agricultural pesticides. Consumer pesticide products, which are products intended for home use, would be subject to the consumer products backstop rule described above.⁶ The pesticide products backstop rule would require affected registrants who have registered any pesticide with the California Department of Food and Agriculture to classify agricultural and non-agricultural products separately under one of six categories. The six categories include disinfectant, fungicide, herbicide, insecticide, rodenticide, and other products. The "other" product category would include only products which could not be classified under one of the five other categories.

Each person or consortium would calculate the total VOC mass for all products classified under a product category for the baseline year and then reduce the total VOC mass by six percent per year beginning in 1996 and ending in 2010. The product categories represent broad classifications of products which have common end uses. In some cases, a product's end use may fall under two or more categories. For example, lubricants could be classified under the household and the automotive, industrial, and mechanical equipment categories. If a product can be classified under more than one category, the manufacturer can decide the appropriate product category.

An alternative format to the format of these rules was considered. The alternative format would require manufacturers to limit the VOC mass of each product by 90 percent by the year 2010. However, this format would not provide manufacturers with as much flexibility because manufacturers would have to discontinue distribution of some products in the control area which could not comply with the 90 percent VOC reduction. The format of the proposed rule would give manufacturers more flexibility because they could decide which products to reformulate and which products to limit or discontinue distributing based on technical and economic considerations.

manufacturers (especially those regulated under FIFRA), and the Agency will attempt to resolve these issues prior to final approval of the South Coast FIP and/or implementation of the backstop measures.

⁶ For products which may fall into more than one suggested category or backstop measure, the affected manufacturer could choose which category or measure best represents a given product

The purpose of allowing a consortium of manufacturers to comply with the VOC limitations of the rules would be to allow industry to pool resources for research and development, and to minimize the impact of the rules on companies who manufacture only one or two products. For example, a person who manufactures one or two products could pool resources with other manufacturers to comply with the VOC limitations of the rule. Any person who wishes to introduce a new product into the control area after January 1, 1996, would have to join a consortium or purchase the rights of a registered manufacturer and assume the baseline VOC mass and VOC limitations of the consortium or manufacturer.

b. *Issues.* EPA is requesting public comment on at least two issues. The first issue concerns the selection of the consumer and pesticide product categories for which baseline emissions and VOC reductions must be calculated. The product categories were selected to represent broad classifications of consumer or pesticide products which have common end uses. The issue is whether the product categories specified in the rules are appropriate and if not, whether there should be more or fewer categories, or whether the categories should be based on characteristics other than end use, such as aerosol and non-aerosol consumer products or synthetic and non-synthetic pesticides.

The second issue concerns the potential test methods for measuring VOC content from consumer and pesticide products. The EPA would prefer to require tests be conducted after the product is packaged so that enforcement personnel could take random samples of products from retail outlets to verify the VOC content of the product specified on the label. However, information on the appropriate procedures for obtaining representative samples from containers for analytical testing is currently under investigation by EPA. Therefore, the EPA is asking the public to provide information on existing sampling methods (or potential sampling methods) for obtaining representative produce samples.

c. *Additional issues for FIFRA registrants.* In addition to the Pesticide Products backstop measure, the Consumer Products measure would affect a number of pesticide products registered under FIFRA requirements. EPA acknowledges the unique situation that these proposed measures may place on the pesticide industry, which has traditionally dealt with FIFRA requirements. However, because VOC emissions from pesticide use represent a

significant source of emissions in the South Coast Air Basin, VOC emission reductions from this category are considered an important part of the overall FIP attainment strategy.

The categorization and definitions used for these proposed backstop measures are based on similar strategies used for VOC source categories. While EPA's Office of Air and Radiation has attempted to craft a proposed rule using FIFRA and California Department of Food and Agriculture terminology, some differences in terminology will be apparent. For example, the Consumer Products backstop rule places "registration" requirements on manufacturers of pesticides intended for home use. The backstop registration or certification requirement would be with EPA's Air Program Office and not with EPA's Office of Pesticide Programs (OPP) and the California Department of Food and Agriculture (CDFA). However, if a pesticide manufacturer should choose to change the formulation of a pesticide product as a means of compliance with FIP backstop measure, the pesticide manufacturer would not be exempt from existing OPP and/or CDFA requirements.

EPA is also requesting comments on how to best establish emission baselines for the affected sources. Under the currently proposed requirements, registrants would be responsible for providing EPA with an estimate of pesticide usage with the South Coast Air Basin.

In addition, EPA is requesting comment on a suggested backstop measure(s) and appropriate regulatory language for reducing VOC emissions while minimizing impacts on existing FIFRA requirements. Of special interest is how established pesticide definitions, categorizations, test methods and/or reporting requirements could be used in these backstop measures. Comments and questions regarding the requirements of these proposed backstops should not be addressed to OPP and/or CDFA at this time. All comments and questions should be addressed or telephoned to the EPA contact listed in the beginning of this notice.

7. Livestock Waste Operations

a. *Source Category Description.* The backstop rule for this source category would regulate VOC emissions at livestock management and livestock waste management operations. Livestock management operations include any facility at which livestock is managed to produce meat, milk, eggs, or breeding stock or where horses are

stabled. Livestock waste is collected, stored, treated, or disposed. Livestock include dairy and beef cattle, horses, swine, sheep, and poultry. The SCAQMD emissions inventory only contained area source emissions estimates for this source category. The AQMP did not contain information on the number, size, and location of livestock management and livestock waste management facilities. Therefore, an exemption level was not included in the backstop rule so the EPA could collect baseline emissions data for all facilities located in the control area. An exemption level for the rule will be evaluated after the EPA receives the baseline data in 1993.

b. *Issues.* EPA is requesting any information which can be used to characterize the number, size, location, and VOC emissions from livestock management and livestock waste management facilities located in the control area. Information is also needed on the various types of control methods that could be used to control VOC emissions from facilities covered by this source category, including the installation and annual operating costs associated with the control methods.

The second issue concerns the lack of a current sampling method for measuring VOC content from livestock waste operations. Information on the appropriate procedures for measuring VOC emissions are currently being investigated by EPA. Therefore, EPA is asking for public comment on how to develop sampling methods for obtaining VOC emissions from those source category and on how to best characterize these emission sources.

E. Group B Backstops: Rail, Aircraft, and Ship Operations

Trains, aircraft, and ships operating in the Basin in 1987 generated about 21 tons of VOC on a typical summer day, or about 1.5 percent of all Basin VOC. If the expected growth of about 2 percent per year were to occur, by 2010 they would emit about 16 percent of the VOC that may be emitted and still achieve attainment. EPA believes it is appropriate to limit emissions from these sources. However, EPA is reluctant to impose any severe restrictions on the activity level in the Basin's transportation links via ship, rail, or air to outside sources and markets, or to impose rigid access restrictions. The potential economic consequences of such restriction justify allowing time for more careful analysis and planning on the state and local level. Also, safety concerns preclude any action on aircraft emission rates rapid enough to be included in the FIP,

since any change in engine design or performance requirements must be carefully studied for its feasibility within safety constraints.

EPA believes that at the least the growth in emissions from this category must and can be moderated without harming the Basin's economy. To minimize adverse economic impact by maximizing the opportunity for rational control actions, EPA is proposing a system of marketable, annually renewed permits to control operation of line-haul locomotives, aircraft and large ships within the Basin. The total emissions in any ozone season will be controlled by the quantity of permits issued.

Permits will be denominated in pounds of VOC, and will be issued to persons and organizations in proportion to the amount of VOC they generated in 1989 in the course of operating locomotives, aircraft, and ships in the Basin. This baseline emission level will be determined by specifically evaluating the emission generating characteristics of each entity's operating fleet. As an alternative, EPA is interested in comments on the desirability of determining this base inventory by using some form of overall fleet-average emission rate, based on the total emissions of all persons or organizations within the group (trains, aircraft, or ships). This latter approach may represent a more equitable treatment of those generating entities that have already invested in cleaner, more modern equipment.

EPA will establish a schedule of VOC generation for the various units and types of operation at a later date. In administering the program, EPA will recognize the low emission character of any type of unit or any individual units if demonstrated, allowing more frequent access by them. Recipients and users of permits will be free to trade them.

It will be a prohibited act during the April through October period to operate a line-haul locomotive, aircraft, or ship within the Basin during or after 1996 without permits in the amount of the VOC generated by that operation.

Furthermore, EPA proposes that the quantity of permits grow at one percent per year elapsed since 1989. Permits will be issued only for the emissions of the propulsion and auxiliary power units, not for emissions associated with cargo. Switching locomotive activity will not be regulated, since it should naturally remain proportional to line-haul activity.

EPA requests comment on two further issues: The stringency of this program for rail, aircraft, and vessels versus the Group C backstop program described below for other off-highway mobile

sources, and possible simplification through exclusion of some aircraft and ship activity at the expense of greater restriction on the remaining operations.

This Group B backstop permit system is the only regulatory program in the FIP which may allow increases in emissions over 1987 levels, although it does constrain growth to 1 percent per year, less than would otherwise likely occur. EPA requests comments on whether actual reductions should be required, to allow other FIP restrictions to be less stringent. For example, a required reduction of one percent per year between 1989 and 2010 would free-up about 9 tons per day of VOC for other uses. EPA requests comments on annual permit adjustments falling between the proposed one percent per year increase and a one percent per year decrease.

The second special area of requested comments concerns possible exclusions from the permit program. Of the 1987 VOC emissions from these Group B sources about 62 percent is from commercial and general aviation turboprop and jet aircraft, 29 percent from locomotives, 6 percent from ships, and 4 percent from piston aircraft. Piston aircraft are generally individually owned, and likely would pose the greatest administration burden per ton of VOC reduction. They could be excluded from the Group B permit program, and the minor difference in emission control can be made up by slightly more restrictive limits on the permits issued to the other source types. A similar situation may exist for small turboprop and some general aviation jet aircraft. EPA requests comments on the exclusion of such aircraft, and may exclude them in the final rule.

Similarly, ocean-going ships could be left out of the permit program. These ships can come to the Basin from around the world, and any one owner or operator may have few Basin berthings per year with limited flexibility to adjust operations. Railroads, airlines, and other jet aircraft owners may be more easily able to adjust to the permit system. EPA requests comment on whether ships should be excluded from the permit system, with the difference in reduction made up by less allowed growth in jet aircraft and locomotive emissions.

F. Group C Backstops: Other Off-Highway Equipment and Vehicles

EPA is proposing today a "Group C Backstop" for control of VOC and CO emissions from all other categories of off-highway mobile sources. Collectively, off-highway mobile sources not covered by the Group B backstop contributed about 4.5 percent of 1987

VOC emissions in the Basin. If not controlled they could in 2010 emit as much as one-half of the VOC carrying capacity of the Basin, severely limiting allowable emissions from other sources. It is therefore essential to ozone attainment that these sources be subject to stringent VOC reduction requirements. The proposed method is to set VOC standards for new engines used in these sources. CO standards for some categories are also proposed, since CO reductions will generally accompany VOC reductions at reasonable incremental cost and will assist in CO attainment. EPA considers these off-highway requirements to be a backstop to action by the District and ARB, and will rescind or modify them as local and state measures are adopted. ARB and the District are actively pursuing control programs but have not yet adopted any standards.

This off-highway mobile source category is actually a grouping of quite diverse types of machines powered by internal combustion engines. It includes smaller, more local service commercial vessels, pleasure boats, farm tractors and other farm equipment, construction vehicles, small service vehicles at airports and other industrial and commercial facilities, non-farm equipment (generators, pumps, compressors, refrigeration units, cranes, lifts, etc.), off-highway motorcycles and buggies, and small engines in household or commercial lawn and garden equipment. These sources can not be overlooked given the constraint of 200 tons per day for 2010 attainment.

EPA proposes today to subdivide the mobile sources in this group into four subgroups for purposes of standard setting, as follows:

1. Off-road motorcycles, buggies, and four-wheel drive vehicles. These vehicles are physically similar enough to highway vehicles that they can be made subject to the ultra clean vehicle VOC and CO standards described elsewhere. EPA proposes to do so, effective with units sold or converted after the effective date of the ultra clean vehicle program. EPA expects that compliance with the 0.2 gram per mile VOC standard and 3.4 gram per mile CO standard will reduce these vehicles' emissions by 95 percent or more.

2. Heavy-duty gasoline and diesel engines in vessels, off-highway vehicles, and equipment rated at greater than 40 horsepower. Included here are engines in vessels and boats (excluding ocean going ships operating between the Basin and ports outside California), wheeled ground vehicles, and mobile equipment. Such engines are of similar size to those used in highway vehicles and are mostly

produced by the same manufacturers which produce emission-controlled engines for highway use. They generally can be tested for emissions with the same test equipment and procedures as highway engines, and should be capable to being engineered to meet the same standards on a brake-horsepower-hour basis. EPA therefore proposes to require these engines to be certified by the Administrator as meeting federal, i.e., 49-state, HC (diesel and gasoline) and CO (gasoline only) standards for heavy-duty engines intended for use in highway vehicles. There are two sets of such standards for heavy-duty gasoline engines, and EPA proposes to require compliance with the more stringent set which applies to engines intended for use in highway vehicles less than 14,001 pounds GVWR. To avoid any potential adverse effect on NO₂ or PM₁₀ levels in the Basin, the highway engine standards for NO_x and diesel particulate will also be applied to these off-highway engines. EPA expects these standards to reduce VOC emissions from off-road diesel engines by about 50 percent and VOC and CO emissions from gasoline engines by about 90 percent. The proposed regulation allows for the approved use of application-specific test cycles and standards provided the stringency is equivalent to these levels of control. LPG engines will be treated as gasoline engines.

3. Light-duty and small utility gasoline and diesel engines in other off-highway boats, vehicles, and non-carried equipment. Engines less than 40 horsepower are used in wheeled or otherwise non-carried mobile units ranging from airport service vehicles to refrigeration units on cargo containers to push lawn mowers. Because of the diversity of designs and applications, EPA cannot propose specific test procedures or numerical standards at this time. EPA proposes to require small mobile gasoline or LPT engines to emit no more than a value equal to 0.10 times the VOC emission level and a CO value no more than equal to 0.10 times the CO emission level of comparable 1990 model engine. For small mobile diesel engines, EPA proposes an emission limit that is no more than a value equal to 0.50 times the VOC emission level of a comparable 1990 model diesel engine. Applicants for certification will have to propose a representative test cycle and information on the 1990 baseline.

EPA expects diesel engines to be able to comply with modest improvements in geometry, fuel injectors, and engine calibration but few or no external emission control devices. The larger of the gasoline engines in this horsepower group used in applications in which

engine dimensions, weight, and outside surface temperature are not critical will likely be equipped with oxidation catalytic converters, in addition to internal refinements. Smaller engines, some of which are currently two-stroke, may have more difficulty meeting their 90 percent reduction requirement while retaining their serviceability for the intended application. Electrification is an alternative for many applications but perhaps not all. EPA seeks comment on the possibility of less stringent standards for such smaller engines or an emissions credit averaging or trading program that would allow some units to be controlled less than 90 percent, in exchange for other units being converted to electric or otherwise achieving more than a 90 percent reduction. Such a program would have to consider engine size, operating cycle, duty hours, and useful life in calculating credit exchanges among diverse types of equipment.

4. Gasoline engines in carried equipment. Chain saws, weed cutters, leaf blowers and other units that are personally carried will face the most difficulty in reducing emissions while retaining serviceability. Therefore, EPA proposes to require only an 80 percent reduction in their VOC and CO emissions. EPA requests comment on an emission credit program which might provide more flexibility for compliance. EPA assumes that only 10 percent of the emissions from all lawn and garden equipment come from carried engines, but invites better information.

EPA has less background expertise on the sources in the above four off-highway sub-categories since it has no specific authority under existing law to regulate them on a nation level. Consequently, the proposed FIP regulations lack many implementation details. EPA will propose necessary implementation details at an appropriate future time, if implementation of this backstop measure is not made unnecessary as a result of future SIP revisions.

EPA proposes to exempt commercial farm vehicles and equipment from this backstop regardless of engine size or type, provided it is unsuitable for home use or commercial groundskeeping. By 2010, EPA does not expect the emissions from such equipment to be of a magnitude and geographic location that can impact ozone attainment.

EPA proposes all of the above standards to apply sometime between 1997 and 2002 and requests comments on effective dates within this range.

Because of the long service life of some off-road units, pre-1997/2002

models may still be in service in 2010 and contribute to Basin VOC emissions unless actions are taken to remove them from service. Also, migration of uncontrolled units from outside the Basin is likely if not restricted. The additional emissions from use of such uncertified units could prevent ozone attainment in 2010. EPA requests comments on approaches for dealing with this problem. Some options include:

1. Requiring sufficient off-highway units below the proposed standards to offset the emissions from higher emitting units.

2. Allowing higher emitting units to be operated in the Basin only if their owners obtained appropriate emission credits from owners of units emitting less than the standard.

3. Restricting the use of higher emitting units in the Basin through construction or other permit restrictions, economic disincentives such as high fees for use of older units, banning noncomplying units from the South Coast area, etc.

4. Extending the requirement for sale of only certified new units to the entire state of California.

EPA not only requests comments on these options but also requests other options that would deal with the problem. Also since later compliance dates (discussed above) would provide less time for turnover and hence more older higher emitting units in the population in 2010, EPA solicits comments on the tradeoffs involved between this issue and the compliance date one.

EPA believes that if these standards and the ultra low emission vehicle program are implemented in 1997, the CO standard can be attained in 2004 without measures to prohibit or discourage use of pre-1997 units since some of the latter will have already been retired. This will be the case if not more than 30 percent of the units (on a CO emissions weighted basis, which would emphasize the shorter-lived gasoline units relative to the diesel units) in use in 2004 are of pre-1997 vintage. EPA invites comments on whether this will be the case. If it is not the case or if the standards are implemented later than 1997, it may be necessary to offset, restrict, or discourage operation of non-complying units in 2004 or to extend the CO attainment date. Comments on measures aimed at reducing or offsetting operation of non-complying units in 2010 for ozone attainment purposes should also address the issue of similar measures for CO attainment in 2004.

Finally, EPA proposes to make it a prohibited action for any person to

remove or render inoperative any emission control device or element of design on a Group C engine, vehicle, or equipment item. A similar prohibition applies by statute to emission controls on highway vehicles and engines, with an exception for private parties which EPA anticipates will be eliminated as part of the pending Clean Air Act amendments.

G. Ultra Clean Motor Vehicle Backstop Program

1. General

Solving the ozone air quality problem in the South Coast Basin will require major (86%) reductions in the mobile source emissions inventory. The necessary reductions in CO emissions to attain the ambient CO standard are less (60%), but still large. The overall motor vehicle fleet is becoming increasingly cleaner over time as newer cars and trucks, which have been certified to more stringent standards, replace older, dirtier vehicles. However, the benefits of normal fleet turnover will be outpaced by the offsetting, continued increase in the number of miles travelled within the Los Angeles area which are projected by the South Coast authorities to increase by somewhat over two percent per year. As a result greater emission reductions are needed than can be obtained from conventional vehicles certified to current emission standards, even with the ARB and EPA improvements to these requirements that are proposed for approval or promulgation elsewhere in today's notice.

One measure amenable to inclusion in the FIP is implementation of new, very stringent emission standards that will require the use of ultra clean vehicle and fuel technology. EPA has been evaluating the feasibility of such stringent standards, including the use of clean fuels. The Administration's Clean Air Act proposal also included an initiative of this type. It appears that aggressive, workable programs can be implemented to take advantage of substantial anticipated improvements in vehicle and fuel technology. Therefore, the Agency proposes achieving the necessary mobile source emissions reduction through a clean vehicle and fuels strategy.

This decision to require the clean vehicle and fuels program is shared by the South Coast and ARB. The State of California is currently moving to adopt a low-emission vehicle program. Several workshops have been held, and the ARB staff is scheduled to bring draft regulations to the Board for approval later this year. Because of the deadline established by the Court, however,

EPA's proposal must precede California action to develop all the necessary measures and to promulgate all the rules which would assure in-use vehicle emissions will be reduced to levels necessary to reach attainment.

It is the judgment of the Agency that the best way to fulfill the FIP's legal requirement for a fully adopted attainment strategy is to propose, as a backstop measure, vehicle emission standards which will result in the very large motor vehicle emission reductions that are required to reach attainment. The standards would apply to vehicles both at certification and under typical in-use conditions. This will assure the necessary reductions are actually achieved by vehicles in the hands of the public. Furthermore, the proposed standard is a composite covering all vehicle emissions of VOC's, not merely tailpipe emissions. A description of how this composite backstop measure would work is included below.

EPA is proposing standards (see below) that it believes are feasible with a number of vehicle technology and fuel combinations. Vehicles operated on alcohols such as ethanol and methanol, CNG, propane, and electricity can meet these standards, and EPA believes that technological advances may allow flexible fueled or reformulated gasoline vehicles to also achieve these levels. They are aggressive goals, however, and will not be achievable with conventional vehicles or fuels. EPA is proposing the earliest date it considers feasible, in light of the requirement of expeditious attainment.

These standards and the associated compliance schedule will, along with the other mobile source measures, achieve approximately an 84 percent VOC reduction in motor vehicle emissions, approximately the same percentage as required in the total VOC inventory. The in-use standard being proposed for CO is of similar stringency, and offers about a 60 percent reduction in this pollutant from mobile sources. The clean vehicle and fuels program will offer compliance flexibilities consistent with overall emission reduction.

It is important to point out that EPA's FIP action should not be construed as an impediment or restriction to the implementation of a clean fuel, clean vehicle program by the State of California. Indeed, EPA encourages California to establish its own program. If California adopts a low-emission vehicle program in the future, the Agency will evaluate the adequacy of the measure and substitute approval of it for the FIP program if EPA determines it will achieve equivalent emission

reductions. Similarly, EPA would substitute any other program that California demonstrated would achieve an equal reduction of ozone. Of course, if California fails to adopt an acceptable program, EPA would proceed to implement the FIP measures including subsequent rulemaking action to describe programmatic details.

2. Description of the Ultra Clean Motor Vehicle Backstop Program

a. *Standards.* EPA has identified in-use composite emission standards for VOC and CO that are technologically challenging, yet feasible with identified emission control technology. The newly defined composite in-use VOC standards include all the emission sources of ozone forming compounds from the vehicle (exhaust, evaporative, and refueling emissions). For light-duty vehicles, the composite in-use VOC standard will be 0.2 gram per mile (or a level of volatile organic compounds that would result in ambient ozone formation comparable to that reasonably attributable to a conventional gasoline-fueled vehicle meeting that standard). The in-use emission CO standard for light-duty vehicles will be 3.4 gram per mile. Vehicles must comply with all standards otherwise applicable, in addition to the newly defined in-use standards. The compliance date and geographic coverage of the ultra clean vehicle program are discussed below.

As noted, the standards listed above would apply to light-duty vehicles (passenger cars and light trucks). Proportional reductions would be required of heavier trucks up to 14,000 pounds GVWR.

Current vehicle emission control programs contain separate requirements for exhaust and evaporative emissions, and new requirements have been proposed by EPA for evaporative running loss emissions. The composite in-use VOC standard would apply to the sum of these three emission types plus refueling emissions. This composite approach encourages each manufacturer to choose the fuel and vehicle design that will reduce total emissions at least cost. For example, a manufacturer may choose a vehicle design based on clean fuels that substantially reduce evaporative and refueling emissions. This approach would allow a lesser decrease in exhaust emissions, perhaps reducing the sophistication and cost of the otherwise required emission control hardware.

Current programs only test properly maintained and used vehicles to determine compliance, i.e., to determine whether a recall should be ordered. The new 0.2 gram per mile composite in-use

VOC standard and the new 3.4 gram per mile in-use CO standard apply to all vehicles in service regardless of maintenance and use. Hence, all cars would be included in recall testing. Such an approach allows the manufacturer the opportunity of achieving compliance by targeting efforts toward developing more durable and tamper-free emission control designs or components. As an option, EPA will allow the manufacturer to request the exclusion of obviously tampered cars from a recall investigation. In this case the numerical standard would be reduced by the amount EPA estimates to be due to tampering on conventional gasoline vehicles.

The proposed program would also allow vehicle manufacturers the flexibility of averaging, banking, and trading. The averaging mechanism would be based on the diesel particulate averaging regulations (48 FR 33456). Under this allowance, the manufacturer must identify an emission "limit" and project the model year sales for each clean fuel engine family. The production weighted average of these limits must be equal to or less than the in-use emission performance standard.

The trading and banking of emission credits can further reduce compliance difficulties, and help preserve model availability. As currently envisioned, manufacturers could earn credits by producing vehicles that are cleaner than the performance standards. The credits may be sold or traded to other manufacturers with engine families whose family limits are above the emission performance standard. They could also be used for demonstrating compliance with the performance standard in the future.

A number of issues related to emission credits will be addressed in subsequent rulemaking actions. These include the specific form and units of the credits, and possible expiration time limits, upper limits on the trading value of credits to prevent unfair trading practices, and development of credits in advance of the compliance dates of the program.

b. *Compliance date.* EPA is considering a range of dates from 1997 to 2002 as the time after which all new vehicles must meet the composite in-use standard. Earlier dates would provide less leadtime for the development of technology, but would assure that such vehicles represent a larger proportion of the motor vehicle fleet by the attainment date. Later dates would provide more leadtime for technology development, but would mean a lesser proportion of the fleet would be such vehicles. Comments are requested on whether

EPA should phase in the program by requiring a proportion to new vehicle sales to meet the standard prior to the 100 percent compliance date. Comments are also requested on the alternative of phasing in the program by requiring earlier compliance with the 3.4 gram per mile CO standard and the 0.2 gram per mile HC standard.

c. *Geographic area covered.* EPA is proposing to apply the clean vehicle standards to all new vehicles sold in the South Coast Air Basin. The Agency is requesting comment on whether the requirement should be applied statewide. California's vehicle emission standards have historically applied statewide, and such an approach would provide a consistent program dealing with California's other nonattainment cities. In this regard, EPA is currently under a legal obligation to implement FIP programs in Sacramento, Kern County, Ventura, and Fresno. Statewide application would ease the significant noncomplying vehicle problem described below.

A statewide program, however, would impose burdens on people not living or driving in California's nonattainment areas. Therefore, the Agency is requesting comments on how to balance the air quality objective of the FIP with the apparent desirability of limiting the clean vehicle program to more restricted geographic boundaries.

d. *Non-ultra clean vehicles.* Attainment of the ozone ambient air quality standard by 2010 will require that the average emissions of the motor vehicle fleet be essentially the same as the standards being proposed for new vehicles. In this regard, any vehicle operating in the Los Angeles area by 2010 that was designed to less stringent standards will adversely affect necessary fleet average emission level. Examples of such vehicles include: (1) Vehicles produced before the initial compliance date of the new in-use standards, (2) vehicles built to less stringent standards that are brought into the Basin by new residents, and (3) vehicles driven into the Basin by visitors.

While the need to account for the first type of vehicle in the attainment demonstration is rather obvious, that associated with the immigration of vehicles may not be. However, the significance of these vehicles relative to attaining the ambient standard can be illustrated by reviewing the available vehicle registration and roadside survey data. Currently, about 20 percent of the vehicles registered in California were not originally sold in the State. Also, at least 2 percent of the vehicles on the

road in the Los Angeles area are driven by visitors. Unless addressed as part of the clean vehicle strategy, these dirtier vehicles represent a very serious impediment to cleaner air in the South Coast area. Therefore, to ensure attainment, the FIP program must include measures to eliminate or offset emissions from these noncomplying sources.

EPA requests comments on additional approaches for dealing with this problem. Some options include:

1. Requiring sufficient vehicles below the 0.2 standards to offset the emissions from higher emitting vehicles.

2. Allowing higher emitting vehicles to be operated in the Basin only if their owners obtained appropriate emission credits from owners of vehicles emitting less than the standard.

3. Restricting the use of higher emitting vehicles in the Basin through registration restrictions, economic disincentives such as higher registration fees for older vehicles, banning unregistered non-complying vehicles from the South Coast area, etc.

EPA not only requests comments on these options but also requests other options that would deal with the problem. Also since later compliance dates (discussed above) would provide less time for vehicle turnover and hence more older higher emitting vehicles in the fleet in 2010, EPA solicits comments on the tradeoffs involved between this issue and the compliance date one.

e. Compliance procedures. EPA will need to promulgate testing specifications for all candidate fuel types. The Agency would also establish uniform methods for measuring ethanol, acetaldehyde, and possibly other pollutants which are not emitted in significant quantity from gasoline, diesel, or methanol vehicles but may be from vehicles using other fuels.

EPA is not now proposing specific changes to the current or proposed test procedures for exhaust, evaporative, or running loss emissions. For refueling emissions, EPA would determine the effectiveness for California's Stage II vapor recovery system or would test any vehicles that elected to use onboard type refueling controls. The gram per mile refueling emissions would be included in the composite emission level of a vehicle for comparison to the in-use standard.

EPA will establish a formula for combining all of the mass emission measurements from the test modes into a single gram per mile value. The in-use emission rates for the important organic compounds present in vehicle emissions would be combined into a single "VOC ozone equivalent" value using relative

ozone reactivity factors established by later rulemaking.

f. Fuel availability, distribution, and use. The composite in-use standard is of sufficient stringency that EPA contemplates the likely need for the use of cleaner fuels (i.e., alternative fuels or reformulated gasoline) in these future vehicles. Hence, the Agency will establish regulations in the future that assure the necessary fuels are conveniently available and distributed in the volumes necessary to assure their use in the vehicles. The details of such requirements would be included in a subsequent proposal. Of course, any state program would need to include such measures to be able to demonstrate equivalent emissions reduction.

g. Implementation regulations. EPA is not proposing at this time the myriad of implementing regulations that would be necessary to assure the smooth operation of this program. While EPA solicits comment at this time on the general elements and procedures that would be necessary, a detailed proposal covering these details will be published at an appropriate future date.

3. Solicitation of Comment

EPA solicits comment on the proposed backstop measure, and whether the approach of establishing an aggressive program of ultra clean vehicle emission control is preferable to requiring reductions in vehicle use which would have equivalent air quality impacts.

H. Committal FIP—Option II

1. Description of the FIP

FIP Option II is called a committal FIP because it consists largely of enforceable commitments by EPA to promulgate fully enforceable CO and VOC rules in the future. All the core control measures (section VII.B.) and Group D ultra clean motor vehicle backstop program (VII.G.) would remain the same in the committal FIP. All of the Groups A, B, and C backstop rules (VII.D., VII.E., and VII.F.) would become commitments in the committal FIP Option II.

The committal FIP credits the same emissions reductions over time as does the complete attainment FIP Option I.

2. Summary of Commitments

EPA commits to promulgate rules for CO and VOC emissions categories described below by January 1, 1995. The Group A rules would take effect January 1, 1996. Thus, they would become effective at the same time as the Group A backstop rules described in the complete attainment FIP Option I. The Group B and C rules would take effect

between January 1, 1997 and January 1, 2002.

For all the Group A sources, i.e., stationary and area sources, the rules would be promulgated in such a way as to provide VOC reductions of 30 percent in each five year period from January 1, 1996 to December 31, 2010. Emissions would be capped at the 1987 or 1990 level, depending on the source category. Thus, emissions in the year 2010 would be projected to be only 10 percent of the capped emissions of 1987 or 1990. After 2010, each source would be required to maintain its emission level to an amount no higher than its 2010 level, except where emissions levels are traded among polluters.

For Group B sources, i.e., locomotive, aircraft, and ships, the rules will provide for limited growth in VOC emissions. In 2010, emissions from this group will be allowed to total 26 percent more than in 1987.

For Group C sources, i.e., other mobile sources, the CO and VOC rules will be promulgated in sets with each set addressing one subgroup. EPA may also promulgate measures to influence or restrict the operation of non-complying units if necessary to achieve the target CO reduction in 2004 or the target VOC reduction in 2010. CO emissions in 2004 from this group will be limited to 47 percent of their 1987 level, and VOC emissions in 2010 will be limited to 25 percent of their 1987 level. In the alternative of a CO attainment date of 2000, CO emissions in 2000 will be limited to 77 percent of their 1987 level.

The CFR Part 52 rules section offers for public comment committal rules for the committal FIP source categories. The committal rules include an enforceable schedule by which traditional regulatory measures would be promulgated as enforceable requirements and a description of the source categories or a description of the polluting sources.

A more detailed description of source categories already appears above under the discussion of Option I, the complete attainment FIP. The committal rules are proposed as alternatives to the preceding backstop rules and therefore have the same codification.

3. Description of Group A Categories to be Controlled

a. Industrial and commercial solvent use. These rules would apply to any distributor or commercial user of industrial solvent or industrial/commercial coatings. The category includes several subcategories as follows:

- (1) Petroleum and perchloroethylene dry cleaning.

(2) Metal cleaning and degreasing.
(3) Surface coating and solvent operations (architectural, automobile assemble and refinishing, marine vessels, aerospace assembly, wood furniture, miscellaneous wood products, wood flatstock, and other industrial surfaces).

(4) Graphic art/printing.
(5) Architectural coatings.

b. *Manufacture of products containing VOCs.* This group would include facilities that manufacture, fabricate, or blend chemicals, pharmaceuticals, or rubber products.

c. *Disposal of materials containing VOCs.* These rules would apply to disposal of biodegradable solid waste emissions from sanitary landfills and waste solvent processed at publicly owned treatment works.

d. *Food preparation.* This group would include seven subcategories as follows:

- (1) Bakery products.
- (2) Food and kindred products.
- (3) Wine and brandy making.
- (4) Fruit and vegetable preservation.
- (5) Grain mill products.
- (6) Vegetable oil production.

e. *Petroleum and natural gas extraction, processing and storage.* This group would include eight subcategories as follows:

- (1) Oil and gas extraction.
- (2) Liquid gas production.
- (3) Petroleum refining.
- (4) Petroleum coke production.
- (5) Petroleum and gasoline marketing (bulk plants and terminal, storage tanks and terminals, marine vessel operations, gasoline fueling of boats, tank trucks, service stations).
- (6) Pipe lines (equipment related-heaters).
- (7) Offshore oil production.

f. *Consumer and pesticide products.* These rules would include the following general categories:

- (1) Animal products.
- (2) Automotive and Industrial products (windshield washer fluid, windshield spray deicer).
- (3) Consumer pesticide products.
- (4) Food products.
- (5) Household products (deodorants, cleaners, polishes).
- (6) Paints and finish products.
- (7) Personal Care Products (hair sprays, shampoos).
- (8) Other products not classified under A(1)(a-g).

The rules would reduce VOC content of propellants and solvents in these products.

g. *Pesticide products.* This rule would apply to the following agricultural and non-agricultural pesticide product categories:

- (1) Disinfectants.
- (2) Fungicides.
- (3) Herbicides.
- (4) Insecticides.
- (5) Rodenticides.
- (6) Other pesticide products.

h. *Livestock waste operations.* These rules would include control of emissions from livestock waste from the following categories:

- (1) Open range operations.
- (2) Open facilities.
- (3) Open confinement facilities.
- (4) Total confinement facilities.

4. Description of Group B Categories to be Controlled

These rules will apply to VOC emissions on line-haul locomotives, aircraft, and ocean-going ships while operating in the South Coast Air Basin.

5. Description of Group C Categories to be Controlled

These rules will apply to VOC and CO emissions of all other off-highway mobile sources, including:

- (1) Marine vessels not included in Group B.
- (2) Pleasure boats.
- (3) Off-highway vehicles (recreational, construction, airport service, etc.).
- (4) Mobile utility equipment (generators, pumps, compressors, refrigeration units, cranes, lifts, etc.).
- (5) Commercial and residential lawn garden equipment.

I. Design of the FIP

1. Attainment Demonstration

a. *Emissions inventory.* In accordance with *Emission Inventory Requirements for Post-1987 Ozone State Implementation Plans* (EPA-450/4-88-19) and in *Emission Inventory Requirements for Post-1987 Carbon Monoxide State Implementation Plans* (EPA-450/4-88-20), EPA has elected to use 1987 as a base year for the emissions inventory. The inventory provided in the AQMP uses 1985 base year, but an essentially complete draft 1987 inventory was available from ARB. The highway mobile source portion of that inventory was not complete, and in any case EPA is substituting its own highway inventory. Another adjustment made to the inventory was the exclusion of ethane from certain stationary source categories. (California considers ethane to be photochemically reactive, where as EPA does not and so excludes it from the definition of VOC.) Finally, EPA made independent estimates of some source categories that would be subject to federal control measures under the proposed FIP. A summary of the baseline inventory is presented in Tables 2, 3, and 4.

TABLE 2.—BASELINE VOC EMISSIONS, SUMMER DAY

[Tons per day]

	1985	1987	2000	2010
Industrial and Commercial Solvents.....	355.8	392.4	383.7	415.1
VOC-Using Manufacturing Processes.....	16.0	16.3	20.5	21.7
Disposal of VOC Materials.....	5.8	5.5	2.3	2.7
Food and Agricultural Industry.....	7.8	7.8	7.5	7.8
Petroleum Production and Marketing.....	83.4	83.8	80.3	82.7
Consumer Solvent Use.....	101.7	112.6	127.1	139.7
Pesticides.....	9.0	10.1	10.8	11.7
Livestock Operations.....	37.9	37.4	39.4	40.6
Miscellaneous Sources also Covered.....	40.7	43.8	44.3	47.6
Total Under Stationary Backstop.....	658.1	709.6	715.9	769.5
Stationary Combustion Sources.....	37.8	39.6	46.9	48.3
Other Stationary.....	1.7	1.8	1.8	2.0
Total Stationary.....	697.5	751.0	764.6	819.8
Highway Mobile Sources.....	766.7	667.3	421.5	501.3
Marine Vessel Loading.....	3.7	3.7	4.0	4.1
Other Mobile Sources.....	83.2	80.0	116.5	134.5

TABLE 2.—BASELINE VOC EMISSIONS, SUMMER DAY—Continued

	[Tons per day]			
	1985	1987	2000	2010
Total Mobile	853.6	751.0	542.0	639.9
Total Baseline VOC Summer Inventory	1,551.1	1,502.0	1,306.6	1,459.7

TABLE 3.—BASELINE CO EMISSIONS, WINTER DAY

	[Tons per day]			
	1985	1987	2000	2010
Highway Mobile Sources	5,525	5,159	4,675	5,367
Other Mobile Sources	369	390	525	602
Stationary	115	115	113	118
Total Baseline CO Winter Inventory	6,009	5,664	5,314	6,086

TABLE 4.—NOX BASELINE INVENTORY

	[Tons per day, annual average]			
	1985	1987	2000	2010
Stationary	286	262	254	271
Highway	619	600	477	554
Other Mobile	135	140	173	192
Total	1,040	1,022	904	1,017

Highway mobile sources emit a significant fraction of the VOC, NO_x, and especially the CO in the air basin. EPA used MOBILE4 and CALI4 (a California-specific version of MOBILE4) to estimate their emissions. Although ARB has its own mobile emissions model, versions of EMFAC7, it could not be used for a number of reasons. First, it does not allow the examination of multiple scenarios that was necessary to evaluate the effect of proposed gasoline volatility, clean fuels, and oxygenated fuels FIP measures. Second, the version available at the time of these evaluations was EMFAC7D, which does not include evaporative running losses as MOBILE4 does. These emissions are significant, and become a larger fraction of the total over time as controls on the other emission fractions become effective. Third, in the time available it would not have been possible to adjust EMFAC7 for the sub-basin analyses performed for the CO attainment demonstration.

The principle changes made by EPA to its MOBILE4 emission factor model involve revisions to the vehicle emission rates for all pollutants to reflect the fact that the California fleet has been subject to more stringent new vehicle emission standards over the years. New estimates were also required for ARB's more recently adopted but not yet implemented standards, which go beyond any dealt with by MOBILE4.

EPA also used its best judgment of the effectiveness of most of the selected strategies. This evaluation, however, was done very quickly because of the court-ordered FIP deadline, and may be subject to revision. Also the modeling assumptions do not attempt to account for any emission reductions from three emission control measures which California has adopted but not yet implemented: on-board diagnostics, enhanced emissions recall, and more stringent mechanic training and licensing. These measures are unlike any for which EPA has estimated benefits in the past.

In the months since EPA constructed the FIP inventory, ARB has issued a revised mobile source emission model, EMFAC7E. This model contains ARB's estimates of evaporative running losses and of the benefits of the three measures EPA did not quantify. ARB has provided documentation for its revised model to EPA, and this information is in the docket. In addition, ARB is scheduled to publish in September a revision to its California Post-1987 Motor Vehicle Plan which will contain emission reduction estimates for fuel volatility and other control measures such as its proposed low emission vehicle program.

EPA has received the EMFAC7E material too recently to contemplate any revisions to this proposal based on it. EPA invites public comments on the material itself. Based on this review and these comments EPA may make inventory and effectiveness adjustments in the final FIP. Such technical adjustments would require or allow changes in the control measures and/or advance the attainment dates.

Because of the nature of the CO problem in the South Coast Air Basin, EPA deemed it necessary to alter the "modified rollback" approach used in the SCAQMP. Instead of basing the CO

inventory and projections and attainment demonstration on 5 kilometer square grid cells, EPA used Regional Statistical Areas (RSAs), which are larger. Conclusions based at this scale will be less dependent on traffic conditions and projections very close to the CO ambient monitors. Since the CO peak appears in the very early morning hours, it must be due not just to rush hour CO emissions in the immediate vicinity of the monitors, but rather to emissions from a larger area. Also, conclusions based on projections of vehicle miles traveled (VMT) may be too dependent on the relatively uncertain projections in cells right near a monitor. The law of averages suggests using a larger area. Thus, for highway emissions estimates EPA combined the VMT and speed projections provided by SCAG for RSAs with the vehicle emission factor projections from CALI4.

b. *Modeling.* The *Guideline on Air Quality Models (Revised)* (EPA-450/2-78-027R, July 1986 and Supplement A, July 1987) provides recommendations on air quality modeling techniques that should be applied to State Implementation Plan revisions. It serves to identify, for all interested parties, those techniques and data bases EPA considers acceptable. It is not intended to be a compendium of modeling techniques. Rather, it should serve as basis by which air quality managers, supported by sound scientific judgment, have a common measure of acceptable technical analysis.

The federal plan, like State Implementation Plans, must provide an analysis to demonstrate that the identified control strategies in the plan are adequate to attain the NAAQS for ozone and CO. This demonstration is generally accomplished through air quality dispersion modeling. Generally,

the procedure consists of obtaining meteorological, air quality, and emissions data for inputs to the appropriate models; estimating the changes in emissions of existing regulations and future growth; then using the model to estimate the future year ambient air quality impacts and to estimate the emission reductions necessary to bring the ambient air quality levels down to the level of the NAAQS.

While implementation plans covering the complex problems and long time frames contemplated in this notice must "demonstrate attainment," the demonstration is not considered the final product dealing with the issue of analyzing the achievement of the standards. Revisions to the analyses must be carried out in order to account for improvements in our understanding of the technical issues associated with air pollution control and with more recent and accurate data on the variations of actual emission and growth patterns versus the projections upon which the plans are initially based. The attainment demonstration serves as an initial estimate of the level of emission reductions required to attain the standards, but will necessarily be modified and updated at a later time to ensure that the attainment goals will indeed be reached.

(1) *Ozone modeling.* The model preferred by EPA for ozone SIP modeling is the Urban Airshed Model (UAM). EPA proposes to use the UAM in its attainment demonstration. The most recent update to this model was used in the recent South Coast SIP. The model underwent rigorous model performance and sensitivity evaluations before it was used in the SIP development. The time period modeled covered a three day ozone episode where ambient concentrations reached the design concentration of 0.36 ppm on the second and third days of the episode. The EPA will use the same modeling episode with some revisions to the base emission inventory, specifically the inclusion of running losses from mobile sources.

Ozone is not a directly emitted pollutant, but rather is formed in the lower troposphere through a series of chemical reactions involving VOCs and NO_x in the presence of sunlight. The conventional approach to reducing ozone concentrations, embodied in EPA's regulations, is to control VOC emissions rather than NO_x emissions. SCAQMD used the UAM to evaluate the feasibility of this conventional approach. It was found that when population and economic growth were

taken into account, if all available VOC-only emission controls (controls which would affect VOC emissions with no impact on NO_x) were applied, the ozone NAAQS could not be reached. The modeling analysis indicated that measures which significantly reduced NO_x , as well as VOC, would be required. The SCAB also exceeds the standards for NO_2 and PM_{10} . The NO_2 is formed from NO_x emissions and the high PM_{10} concentrations are heavily influenced by nitrate aerosols which are formed from NO_x through a series of chemical reactions. Therefore, the SCAQMD is implementing NO_x controls to reduce the ambient concentrations of NO_2 and PM_{10} .

The underlying assumption made by EPA in estimating the emission controls necessary to attain the ozone NAAQS, is that significant NO_x emission reductions will occur, either through locally adopted measures or through changes accompanying VOC emission reduction measures. These NO_x reductions, however, are not considered to be an integral part of the FIP emission controls, but rather a condition which must be considered in estimating the necessary VOC emission reduction targets. The modeling results indicate that by accounting for NO_x in this manner, the estimate of the VOC reductions should represent the upper bound of the necessary control level which would bring the South Coast Air Basin into attainment.

There are two methods by which the UAM can be used to indicate whether identified emission controls are sufficient to attain the standards. The most rigorous method involves applying each individual control measure to the appropriate source categories on a spatial and temporal basis and then running the model to see the effect on the ambient air quality. The other option is to reduce the emissions in a more generalized manner and to use the model to identify, for lack of a better term, a "carrying capacity" of VOCs and NO_x which will bring the ambient concentrations down to the level of the NAAQS. The former method takes full advantage of the capabilities of the UAM model, but is highly dependent on the precision of the input data. The latter method yields a total emission reduction target without explicitly accounting for the subtleties of proposed controls, but it still has the advantage of providing an accurate simulation of the physical and chemical properties of the polluted urban atmosphere and the probable effects of controls.

For the Federal Plan, the EPA has used a combination of the above

approaches. The SCAQMD SIP analysis took the first of the above approaches. The nature of the measures proposed in the Federal Plan does not, however, lend itself to such precise spatial and temporal specification. The SCAQMD analysis does establish a good estimate of what it will take to achieve the standards in the basin; it also applies controls to almost every conceivable source in the basin. From this a "carrying capacity" has effectively been established. Although the Federal measures are somewhat less precise than the locally proposed measures, they are being applied to the same sources. Therefore, the EPA is using the SCAQMD attainment analysis, with the aforementioned modifications to the emission inventory, to establish the carrying capacity of VOC and NO_x and is comparing the emission reductions from the Federal measures against that carrying capacity for purposes of the attainment demonstration.

From the above analysis EPA has determined that a VOC emission reduction of approximately 86% is necessary to bring the basin into attainment of the ozone NAAQS. This is based on the assumption that the NO_x emissions are reduced by 82%. As stated earlier, these numbers represent our current estimate. The target date for reaching attainment is well into the future. There will necessarily be a number of iterations of this analysis as we get more accurate estimates of the emissions and growth in the coming years.

(2) *Carbon monoxide modeling.* The 8-hour primary NAAQS for CO is frequently exceeded in the SCAB. The primary NAAQS for CO is defined as an ambient concentration of 9 ppm for an 8-hour average, not to be exceeded more than once per year. To demonstrate attainment, control strategies must be identified to reduce the "highest second high" CO concentration to the level of the 8-hour average CO NAAQS. For the SCAB, the "highest second high" ambient concentration is 23.4 ppm, which occurred during the night of 12-13 December 1988 at the Lynwood monitoring station in south-central Los Angeles county.

EPA guidance on carbon monoxide modeling is primarily focused on techniques for estimating hot-spot CO impacts (localized impacts from nearby roadways). The recommended techniques for hot-spot analyses utilize line source models which simulate the emissions and associated impacts from a very small number of roadway links. Data analysis, however, indicates that the CO non-attainment problem in the

South Coast Air Basin is not solely related to hot-spots, but is rather a problem over a wide geographic area. EPA guidance on area-wide CO problems is to consider it on a case-by-case basis, without specifically identifying a recommended model. To further complicate the situation, the highest concentrations occur over this area under stagnation conditions (prolonged periods of very light winds). EPA does not have any recommended procedures appropriate for this circumstance. The guidance suggests that " * * * techniques specific to the situation and location must be developed. Such techniques might include empirical models or box models."

When the SCAQMD analyzed the CO problem in the basin, they chose to use a modified rollback approach wherein they assumed that the CO concentrations which have been measured at various monitors in the area are directly proportional to the CO emissions in the immediate vicinity of the individual monitor. They accomplished this by dividing the area into five kilometer grid cells and then assumed that the only emissions affecting a given CO monitor were from the grid cell in which the monitor happened to be located. EPA did not find that technique to be acceptable. EPA has concluded that emissions from a wider area must be considered when analyzing the elevated CO concentrations in the basin. Also, EPA guidance indicates that modified rollback techniques are not the most appropriate method for analyzing CO problems unless it shows that the area can be brought into attainment through the Federal Motor Vehicle Control Program.

The EPA has identified several possible modeling approaches for analyzing the area wide component to the CO problem in the South Coast Air Basin. One possibility is to use the RAM model, which is a gaussian plume model appropriate for use in evaluating urban area sources. The EPA tested the RAM model to determine the potential for using it in evaluating the CO concentrations in the area, even though its formulation is not particularly well suited to evaluating stagnation conditions. When the model was tested for the stable conditions with a 1 m/s wind speed the concentrations were underestimated by a factor of 10. If the model was artificially constrained by assuming that there was neutral stability with a very low mixing depth, then concentrations could be obtained that were close to the level of the

observations. Such tuning of the model inputs is not technically credible.

A technique which has been used under similar circumstances in Phoenix, Arizona and Denver, Colorado is to use the Urban Airshed Model to simulate the CO emissions and their impacts on the ambient CO concentrations. This model technically has the best treatment of this type of phenomenon, but also has extremely high data input requirements. While meteorological and emission data have been assembled for the summer ozone UAM simulation, the data necessary to run the UAM for the winter CO problem are not available to test the model. The UAM is potentially the best suited model for simulating the conditions of concern.

Another possibility is the use of a ventilated box model. This technique has been used for evaluating high PM_{10} concentrations under stagnation conditions in several other parts of the country. These applications have primarily been in relatively confined, enclosed valleys. It has not been determined whether this modeling approach would be appropriate for the conditions which occur in south-central Los Angeles County. Some type of modified rollback could be used, albeit it lacks the technical underpinning EPA would find most desirable in an attainment demonstration. One assumption behind a rollback approach is that the monitoring locations used in the analysis are actually recording the highest concentrations in the area. The more rigorous modeling approaches allow the consideration of other receptors and the relative impacts of changes in the spatial and temporal distributions of emissions.

EPA is proposing to use a modified rollback approach, in spite of its inherent limitations. At this time, the highest-second-high monitored value, above, appears to be the most reasonable number on which to base the control levels. The EPA has concluded that the data bases to run the UAM, the model with potentially the best technical applicability, are not available at this time. The formulation of a gaussian plume model, such as RAM, does not adequately simulate the observed conditions. EPA has not identified a suitable box model for this application. The majority of CO emission reductions being proposed for federal implementation consist of reductions in on-road mobile source emissions, which constitute the vast majority of CO emissions in south-central Los Angeles County. The proposed emission reductions are similar to the Federal Motor Vehicle

Control Program in that emission reductions will apply uniformly across the mobile sources inventory. Control strategies that dramatically affect traffic patterns and the distribution of the projected emissions are not being proposed in the federal plan for CO attainment. Also, while growth is projected to occur in this area, the basic patterns of traffic flow are not projected to change dramatically under the federal plan.

Therefore, for the purposes of this plan, using a modified rollback should yield a reasonable estimate of the controls necessary to attain the CO NAAQS. While this technique yields a reasonable estimate of what will be required, it cannot yield information on areas which are not monitored. Therefore, EPA maintains that future modeling for the SCAB must be refined by using a suitable area-wide model combined with CO hot-spot analyses to adequately evaluate the total CO problem in the SCAB and that further controls may need to be identified as a result of that analysis.

CO monitors are located throughout the SCAB. As noted above, the extremely high ambient CO levels are limited to south-central Los Angeles County. To evaluate the impact of CO emissions on these high ambient levels, EPA is limiting the rollback analysis to this area, although the control measures will apply throughout the basin. Therefore, the EPA has defined a sub-area where the rollback analysis will be applied. EPA's selection of the sub-area is constrained by the traffic data available. The subset of data available for evaluating the emissions changes, including growth, were "Regional Statistical Areas (RSAs)," defined by Southern California Association of Governments (SCAG). The selected RSAs encompass the area where the highest CO concentrations have been measured and run from the Los Angeles Central Business District, west to the coast, and south to Long Beach. The overall VMT growth in these areas is projected to be approximately 13%. As discussed elsewhere in this document, the goal is to achieve attainment by 2000 or 2004. Based on the design concentration of 23.4 ppm, emission reductions of at least 60%, relative to the 1987 baseline emissions, are necessary to bring ambient air quality levels down to the NAAQS.

(3) *Emission inventory and mobile source controls.* The emission inventory used for the CO analysis is different than that assembled by the SCAQMD. Mobile source CO emissions are dependent on vehicle speed and on

temperature; generally emissions increase as speed or temperature decreases. The SCAQMD used a temperature of 75 °F for their analysis. The EPA's analysis was based on an ambient temperature of 59 °F which is representative of conditions during high CO events in the area. The EPA emission estimates are based on the MOBILE4 emission model, modified to account for the California emission standards, whereas the SCAQMD

analysis was based on ARB's EMFAC7-D emission model.

Table 5 identifies the base case emissions for 1985, 1987, 2000, and 2010 and the effects of the proposed controls on those emissions. The mobile emissions are based on traffic data for the RSAs listed above. The "offroad" emissions for this area were calculated based on an appropriate proportion of the total offroad emissions.

Implementation of the various mobile

source control measures identified in this table will result in a net emission reduction of approximately 46%, relative to the 1987 baseline emissions, by 2000. This still leaves a shortfall of approximately 200 TPD in the year 2000. The additional emission controls to achieve this reduction are obtained through the various backstop measures discussed elsewhere in this notice.

TABLE 5.—CO ATTAINMENT DEMONSTRATION

[CO emissions, winter day, tons/day, downtown area]

	1985	1987	2000	2010
Highway Mobile Sources.....	1,521	1,285	857	896
Other Mobile Sources.....	91	92	124	142
Stationary.....	32	31	30	32
Total Baseline CO Winter Inventory.....	1,643	1,408	1,012	1,070
Estimated Ambient CO Concentration (ppm).....		23.4	16.8	17.8

Note: Baseline includes most effects of California Motor Vehicle Program.

TABLE 6.—Highway Mobile Emissions in Downtown Area

[Cumulative effect of measures]

	2000	2010
Without California Motor Vehicle Program.....	939	1,032
FIP Baseline.....	857	896
Reduce Fuel Volatility (RVP) to 10 psi.....	731	760
Reformulate Fuel with 2.7% Oxygen.....	617	643
Total of Controlled Highway Emissions.....	771	817
Non-highway and Stationary Sources:		
Estimated Ambient CO Concentration (ppm).....	12.8	12.6
Backstop Reductions Need to Attain.....	200	246

CO Carrying Capacity of Downtown Area is 571 tons/day.

2. Reasonable Further Progress

Section 172(b)(3) of the Clean Air Act requires "reasonable further progress" (RFP), defined as annual incremental reductions in emissions sufficient to provide for attainment. If the bulk of needed emission reductions were postponed until just before the planned attainment date, they would be unnecessarily disruptive or perhaps not occur at all. The RFP requirement helps avoid these undesirable outcomes, and helps reduce peak concentrations of ozone and the number of ozone exceedances in the interim years before the 2010 attainment date.

Basic EPA guidelines concerning RFP are set forth in "Revised Guidance of Tracking Reasonable Further Progress (RFP) in Ozone Control Programs" (September 1986). EPA Region 9 also developed "Guidance for the Preparation of Reasonable Further

Progress Annual Reports for Calendar Year 1985" (January 1986) to detail particular items and procedures to be included in state implementation of RFP. A major requirement is the submittal of annual RFP reports. The reports should show numerically and graphically the emission reductions achieved over the preceding year, together with any shortfall and steps taken to correct it. This would include subtotals for point, area, and mobile sources, and also details on particular point sources newly constructed or shut down. Air quality data is also to be reported, with possible adjustments for weather conditions that would otherwise obscure underlying air quality trends. A second general requirement is for periodic updating of the emissions inventory as a whole.

In recognition of historical inconsistencies and delays in the RFP process, additional emphasis is placed on RFP in EPA's proposed Post-1987 Ozone Policy and in potential amendments to the CAA. The status of implementation milestones and corrective actions associated with rule effectiveness studies are to be incorporated in RFP reports, which should be submitted within 9 months of the end of the calendar year being reported on. Emissions inventories are to be updated every 3 years. Five years after the plan is promulgated, and every 3 years thereafter, it must be demonstrated that the average emission reductions occurring per year are sufficient to achieve the planned attainment date.

In the case of the South Coast, VOC emissions must be reduced each year by about 56 tons/day, or 4% of the 1987 inventory, in order to attain the NAAQS in 2010 along a straight line path. CO emissions must be reduced each year by 64 tons/day, or 4.5% of the 1987 inventory, to attain by 2000 (49 tons/day or 3.4% to attain by 2004). The corresponding annual NO_x reductions necessary to achieve the NO_x NAAQS in 2000 are 45 tons/day or 4.3%. All of these reductions must be achieved in the face of a projected 24% and 37% increase in population by 2004 and 2010, respectively.

Given the design of the proposed South Coast FIP, emissions tracking takes on particular importance. Under any potential RFP regime, failure to meet RFP goals should be accompanied by corrective action. However, in the current case the corrective action takes the form of federal backstop measures to supplement actions taken by the State and SCAQMD. The backstop measures would be promulgated as part of the proposed FIP, and would be scheduled to go into effect in 1996 and 1997, with a steady annual reduction in emissions in each backstop source category till 2010. If tracking shows that adequate emissions reduction progress is being made even without the backstops, they could be rescinded. Thus the FIP would serve as a flexible guarantor of RFP. The determination of whether and how many backstop measures to rescind for Groups A and B would be made with the aid of RFP reports and other RFP tracking mechanisms.

EPA would build upon the existing RFP reporting system used by ARB and SCAQMD by providing RFP information on the FIP measures to be incorporated in existing reports. EPA will participate in the Monitoring Working Group that has been established with the participation of ARB, SCAQMD, and SCAG. In addition, a new tracking system, described below, would be implemented. It would provide additional assurance the RFP goals are being met.

The following table shows the FIP RFP goals. Starting with the draft 1987 SCAQMD inventory, adjustments were made to exclude ethane from various stationary source category estimates. The highway mobile source emissions were replaced with results from EPA's CAL14 model. Finally, emissions reductions due to creditable SIP measures, and the FIP backstop and core measures, were subtracted, in amounts consistent with their state of implementation in each future year.

TABLE 7.—VOC—BASELINE

[Tons per day]

	Combustion other	Back-stopped stationary	Off-road mobile	Highway	Total
1985.....	40	658	87	767	1,551
1987.....	41	710	84	667	1,502
1990.....	43	711	92	593	1,440
1995.....	46	713	106	471	1,336
1998.....	48	715	115	441	1,318
2000.....	49	716	121	422	1,307
2001.....	49	721	122	429	1,322
2004.....	49	737	128	453	1,368
2007.....	50	753	133	477	1,414
2010.....	50	770	139	501	1,460

TABLE 8.—VOC—REASONABLE FURTHER PROGRESS

[Tons per day]

	Combustion other	Back-stopped stationary	Off-road mobile	Highway	Total
1985.....	40	658	87	767	1,551
1987.....	41	710	84	667	1,502
1990.....	43	711	92	593	1,440
1995.....	46	713	79	472	1,311
1998.....	48	566	71	399	1,084
2000.....	49	485	66	351	951
2001.....	49	449	64	327	888
2004.....	49	324	56	254	683
2007.....	50	197	48	181	476
2010.....	50	70	40	109	270

SCAB Controlled VOC Emissions—Graph 1

3. RFP Tracking Program

As part of this rulemaking, EPA is announcing its intention to develop a

better means of tracking emission reduction progress. As district, state, and federal control measures in the SIP and FIP come into effect, pollutant emissions are planned to decrease, ultimately to the levels consistent with attainment of the NAAQS. However, as the current state of nonattainment shows, historically actual emission levels have been higher than those predicted in SIPs. This is in spite of RFP reports, submitted periodically by states to EPA, which are intended to ensure that steady progress in emission inventory reductions is made over time. A better mechanism is needed to ensure that planned emission reductions are actually occurring, and that prompt remedial action is taken. This is especially true in the case of the South Coast, with its severe and complex nonattainment problems.

An emission tracking system is of key importance to the FIP, as it will provide the rationale for retaining or rescinding federal backstop control measures. At each evaluation time, if the tracking system and other analysis shows that adequate emissions reduction progress has not been made (on average over the preceding three years), then backstop measures will remain in effect. Conversely, adequate progress could allow the rescission of some backstop measures. Because of the nature of the backstop measures, an accurate determination of progress is necessary.

Ideally, an emission inventory tracking system should provide an "early warning" that emissions are not decreasing as expected. Needed adjustments to the control program could then be more gradual and less disruptive. To do so, the system should provide information more quickly than existing reporting. Instead of relying solely on RFP reports with a year's lag time, EPA would prefer some measure of progress within three to six months after the end of a monitoring period. In addition, it is desirable for the system to produce information of higher quality than currently available. Timely identification of problem areas and the severity of the problems would help in identifying remedial measures.

Limits on EPA resources must also be considered in the design of a tracking system. The currently available staff time, and money for outside contracts, pose constraints to the amount of effort that can be expended in tracking system maintenance. Other issues are the need to separate emissions changes due to just economic growth from those due to intrinsic process changes, and the need for correct accounting of federal

measures in determining emissions reduction credit for the overall plan.

Outputs of the system should include a comparison of actual and expected emissions for the entire inventory for each pollutant, and comparisons for the various source types. Of especial interest would be those source types with large or particularly uncertain emissions. An index of emissions might be possible. The system could also flag control measures not adopted or implemented on schedule. Necessary inputs would include emissions data provided by ARB and the SCAQMD, plus emission factors and socioeconomic data needed to calculate emissions. Unfortunately, some of this data is available less frequently than the tracking system might require, though California is moving toward annual inventories. The results of rule effectiveness studies and audits could also be incorporated. While EPA would not seek to duplicate the emission inventory development work of the State and district, supplementary information, spot checks, and modifications may be necessary. Annual emissions statements from point sources are likely to be required by amendments to the CAA, and could provide further useful input.

Some basic data required include: Point source stack tests and other direct emission measurements; new sources and elimination of old ones; emission factors; throughput rates; vehicle fleet mix and mileage accumulation rates; vehicle miles traveled; population; and employment. EPA is currently investigating innovative ways of collecting and processing this data, as well as the possible initiation of selective, custom data gathering to supplement existing data production activities (such as traffic demand modeling). On the basis of this investigation, EPA will develop a design for a tracking system, anticipated to be complete in the fall of 1990.

4. Maintenance Provisions

As discussed above in section IV.A.3.h., EPA is proposing to revise current maintenance plan requirements for long term nonattainment areas. EPA's proposed revised requirements would allow the State to postpone submission of a quantitative maintenance plan for such areas until just prior to the time the area is scheduled to attain the standard. At the time of initial SIP submittal, States need submit only qualitative maintenance plans including sufficient measures to allow EPA to conclude that the SIP will ultimately ensure maintenance of the

standards. For the South Coast area, the qualitative maintenance plan included as part of this FIP proposal consists of the following measures: (1) The continuing emission caps in the federal backstop measures on almost every emission source category (enforced through Groups A and B backstop measures); (2) the continuing ban on construction or modification of new major sources; and (3) increasing mobile source emission reductions due to the effects of future fleet or equipment unit turnover (enforced through Groups C and D backstop measures). EPA commits to ensure that the maintenance requirement is fully satisfied with the promulgation of a quantitative maintenance plan, including a modeled maintenance demonstration and additional measures, if necessary, at the appropriate time prior to attainment.

5. Resources

The proposed FIP was designed to be capable of effective enforcement without exceeding the existing resources of EPA. If EPA delegates enforcement of any portion of the FIP to other agencies, EPA will ensure that these agencies maintain adequate resource commitments to administer the delegated plan elements successfully.

6. Consultation

During the public comment period on this notice and following issuance of the final FIP, EPA will provide a satisfactory process of consultation with State and local governmental agencies and elected officials. EPA intends the FIP to be designed to support and complement, rather than undermine, the efforts of the State and local governments to comply with the goals of the CAA. Therefore, EPA specifically invites comment from State and local officials on ways to ensure the success of the FIP while minimizing conflict with the projects, plans, and other activities of affected State and local governments.

VIII. Regulatory Impact Analysis

A. Administrative Designation and Regulatory Analysis

Executive Order No. 12291 requires each Federal Agency to determine if a regulation is a "major" rule as defined by the order and "to the extent permitted by law" to prepare and consider a Regulatory Impact Analysis (RIA) in connection with every major rule. Major rules are defined as those likely to result in:

1. An annual cost to the economy of \$100 million or more; or

2. A major increase in costs or prices for consumers or individual industries; or

3. Significant adverse effects on competition, employment, investment, productivity, innovation, or international trade.

The draft regulatory impact analysis addresses the benefits, and benefit-costs of the measures proposed today in this proposed rulemaking for a FIP.

B. Costs Impacts

The costs impacts are addressed for the core and backstop rules. The least expensive control measures are those associated with the phase II volatility rules and reformulated gasolines. The ultra clean motor vehicle backstop program should be low-cost once the technology has been incorporated into full scale production for the California market. The backstop measures can be relatively low-cost for those solvent usages and consumer products where reformulation technology has been proven commercially available. However, for those source categories (e.g. marine vessel loading/unloading) and consumer products (e.g. pesticide applications), costs are highly uncertain.

These estimates of control requirements represent full attainment and are in the range of \$2 to \$8 billion for controlling VOCs and between \$0.6 and \$1.5 billion for CO in the Basin. The Agency believes that a best (point) estimate of the total costs of the FIP program would be approximately \$2.6 billion. For more detailed discussion on the cost analysis, refer to the separate document, the Regulatory Impact Analysis, that accompanies this Notice of Proposed Rulemaking.

C. Benefits

In lieu of a formal benefit analysis, a qualitative analysis was prepared for the South Coast FIP. The analysis describes: (1) The improvement in health, from the standpoint of reducing both acute and chronic health risks, associated with reduced exposure to elevated levels of ozone; and (2) the welfare improvements, in form of reduced vegetation effects, reduced forestry effects, and reduced materials damages.

In addition, reduction of VOCs, precursors to ozone, also produces health and welfare benefits in the form of reduced morbidity and mortality associated with particulate matter formed as a secondary pollutant. To some degree, VOC emissions lead to condensation and the formation of secondarily-formed aerosols, and hence cause increased ambient air concentrations of particulate matter.

Furthermore, exposure to certain VOC emissions can pose risks in terms of potential toxicity on human health (e.g. carcinogens).

D. Impact on Small Entities

Under the Regulatory Flexibility Act, whenever an Agency publishes any proposed or final rule in the *Federal Register*, it must determine whether or not a Regulatory Flexibility Analysis (RFA) needs to be prepared. The RFA describes the impact of the rule on small entities (i.e. small businesses, organizations, and governmental jurisdictions).

The EPA has established guidelines for determining whether an RFA is required to accompany a rulemaking package. The guidelines state the criteria for determining when the number of affected small entities is "substantial" (i.e. at least 20 percent of the small entities) and when an impact is "significant". The determination of significance essentially depends upon compliance costs, production costs, and predicted closures. The draft RIA describes the criteria of methodology employed to estimate the effects of a regulation on small entities.

Although a detailed economic impact analysis was not prepared (Refer to VII-B, COSTS IMPACTS in the RIA), a partial screening analysis of the affected facilities for the backstop control measures for industrial and consumer solvents indicates the potential for a substantial degree of facilities affected to be small entities. However, results are not available to predict whether the rules will substantially alter the degree of competition and increase market power among the surviving firms. But, with the size cutoffs for VOC usage that have been incorporated, a large percentage of potentially affected small entities should avoid adverse impacts. In addition, provision for added flexibility in control decisions through the use of economic incentives should help mitigate impacts for small entities which remain affected.

Positive impacts on small entities providing engineering and other services to the regulated entities will result, but have not been gauged.

E. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* Reporting and recordkeeping burden on the public for this collection is estimated and included as an attachment to the Standard Form

83 in the docket. These burden estimates include all aspects of the collection effort and may include time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, completing and reviewing the collection of information, etc.

If you wish to submit comments regarding any aspect of this collection of information, including suggestions for reducing the burden, or if you would like a copy of the information collection request (please reference ICR #1570.01), contact Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St. SW., Washington, DC 20460 (202-382-2745); and Paperwork Reduction Project (ICR #1570.01), Office of Management and Budget, Washington, DC 20503. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects in 40 CFR Parts 51 and 52

Air pollution control, Carbon Monoxide, Hydrocarbons, Incorporation by Reference, intergovernmental relations, Ozone, Reporting and Recordkeeping requirements.

Dated: July 31, 1990.

William K. Reilly,

Administrator, U.S. Environmental Protection Agency.

Title 40 of the Code of Federal Regulations, chapter I, part 51, subpart D and part 52, subpart F is proposed to be amended to as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

Subpart D—Maintenance of National Standards

1. The authority citation for part 51 continues to read as follows:

Authority: 42 U.S.C. 7401(b)(1), 7410, 7420 to 7429, 7501 to 7508, and 7601(A).

2. Section 51.40 is proposed to be amended by adding the following sentence at the end of paragraph (a) to read as follows:

§ 51.40 Scope.

(a) * * *

The requirements of this subpart do not apply to any areas that do not project attainment until more than ten years after the date of SIP adoption.

* * * * *

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart F—California

3. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

4. 40 CFR part 52 is proposed to be amended by adding a new § 52.258 to read as follows:

§ 52.258 Controls and prohibitions on gasoline volatility and liability for violations.

(a) *Definitions.* For the purpose of this section:

(1) *Carrier* means any distributor who transports or stores or causes the transportation or stores or storage of gasoline without taking title to or otherwise having any ownership of the gasoline, and without altering either the quality or quantity of the gasoline.

(2) *Distributor* means any person who transports or stores or causes the transportation or storage of gasoline at any point between any gasoline refinery or importer's facility and any retail outlet or wholesale purchaser-consumer's facility.

(3) *Ethanol blending plant* means any refinery at which gasoline is produced solely through the addition of ethanol to gasoline, and at which the quality and quantity of gasoline is not altered in any other manner.

(4) *Ethanol blender* means any person who owns, leases, controls, or supervises an ethanol blending plant.

(5) *Refiner* means any person who owns, leases, operates, controls, or supervises a refinery.

(6) *Retailer* means any person who owns, leases, operates, controls, or supervises a retail outlet.

(7) *Reseller* means any person who purchases gasoline identified by the corporate, trade, or brand name of a refiner from such refiner or a distributor and resells or transfers it to retailers or wholesale purchaser-consumer displaying the refiner's brand, and whose assets or facilities are not substantially owned, leased, or controlled by such refiner.

(8) *Wholesale purchaser-consumer* means any organization that is an ultimate consumer of gasoline and which purchases or obtains gasoline from a supplier for use in motor vehicles and receives delivery of that product into a storage tank of at least 550-gallon capacity substantially under the control of that organization.

(b) *Prohibited activities.* No refiner, importer, distributor, reseller, carrier, retailer or wholesale purchaser-consumer shall sell, offer for sale,

supply, offer for supply, or transport gasoline whose Reid vapor pressure exceeds the applicable standard within the South Coast Air Basin. As used in this section "applicable standard" means the standard listed in this paragraph for the time period in which gasoline is intended to be dispensed to motor vehicles or, if such time period cannot be determined, the standard listed in this paragraph that specifies the lowest Reid vapor pressure for the year.

APPLICABLE STANDARDS

Month	RVP-1992	RVP-1993	RVP-1994 and later
January.....	(¹)	10.0	10.0
February.....	(¹)	10.0	10.0
March.....	(¹)	10.0	10.0
April.....	7.8	7.8	7.8
May.....	7.8	7.8	7.8
June.....	7.8	7.8	7.0
July.....	7.8	7.8	7.0
August.....	7.8	7.8	7.0
September.....	7.8	7.8	7.0
October.....	7.8	7.8	7.8
November.....	10.0	10.0	10.0
December.....	10.0	10.0	10.0

¹ No limit.

Note: These standards supersede standards listed in 40 CFR 80.27.

(c) *Determination of compliance.* Compliance with the standards listed in paragraph (b) of this section shall be determined by use of one of the sampling methodologies specified in appendix D to 40 CFR Part 80 and one of the testing methodologies specified in appendix E to 40 CFR Part 80.

(d) *Liability.* Liability for violations of paragraph (b) of this section shall be determined according to the provisions of paragraphs (e) through (k) of this section.

(e) *Violations at refineries or importer facilities.* Where a violation of the applicable standard set forth in paragraph (b) of this section is detected at a refinery or importer's facility, the refiner or importer shall be deemed in violation.

(f) *Violations at carrier facilities.* Where a violation of the applicable standard set forth in paragraph (b) of this section is detected at a carrier's facility, whether in a transport vehicle, in a storage facility, or elsewhere at the facility, the following parties shall be deemed in violation:

(1) The carrier, except as provided in paragraph (k)(1) of this section; and

(2) The refiner (if he is not an ethanol blender) at whose refinery the gasoline was produced or the importer at whose facility the gasoline was imported, except as provided in paragraph (k)(2) of this section; and

(3) The ethanol blender (if any) at whose ethanol blending plant the gasoline was produced, except as provided in paragraph (k)(6) of this section.

(g) *Violations at branded distributor or reseller facilities.* Where a violation of the applicable standard set forth in paragraph (k)(6) of this section is detected at a distributor facility, a reseller facility, or an ethanol blending plant which is operating under the corporate, trade, or brand name of a gasoline refiner or any of its marketing subsidiaries, the following parties shall be deemed in violation:

(1) The distributor or reseller, except as provided in paragraph (k)(3) of this section; and

(2) The carrier (if any), if the carrier caused the gasoline to violate the applicable standards; and

(3) The refiner under whose corporate, trade, or brand name (or that of any of its marketing subsidiaries) the distributor, reseller, or ethanol blender is operating, except as provided in paragraph (k)(4) of this section; and

(4) The ethanol blender (if any) at whose ethanol blending plant the gasoline was produced, except as provided in (k)(6) of this section.

(h) *Violations at unbranded distributor facilities.* Where a violation of the applicable standard set forth in paragraph (k)(6) of this section is detected at a distributor facility or an ethanol blending plant not operating under a refiner's corporate, trade, or brand name, or that of any of its marketing subsidiaries, the following parties shall be deemed in violation:

(1) The distributor, except as provided in paragraph (k)(3) of this section;

(2) The carrier (if any), if the carrier caused the gasoline to violate the applicable standard;

(3) The refiner (if he is not an ethanol blender) at whose refinery the gasoline was produced or the importer at whose import facility the gasoline was imported, except as provided in paragraph (k)(2) of this section; and

(4) The ethanol blender (if any) at whose ethanol blending plant the gasoline was produced, except as provided in paragraph (k)(6) of this section.

(i) *Violations at branded retail outlets or wholesale purchaser-consumer facilities.* Where a violation of the applicable standard set forth in paragraph (k)(6) of this section is detected at a retail outlet or at a wholesale purchaser-consumer facility displaying the corporate, trade, or brand name of a gasoline refiner or any of its marketing subsidiaries, the following parties shall be deemed in violation:

(1) The retailer or wholesale purchaser-consumer, except as provided in paragraph (k)(5) of this section;

(2) The distributor (if any) and/or reseller (if any), except as provided in paragraph (k)(3) of this section;

(3) The carrier (if any), if the carrier caused the gasoline to violate the applicable standard;

(4) The refiner whose corporate, trade, or brand name (or that of any of its marketing subsidiaries) is displayed at the retail outlet or wholesale purchaser-consumer facility, except as provided in paragraph (k)(4) of this section; and

(5) The ethanol blender (if any) at whose ethanol blending plant the gasoline was produced, except as provided in paragraph (k)(6) of this section.

(j) *Violations at unbranded retail outlets or wholesale purchaser-consumer facilities.* Where a violation of the applicable standard set forth in paragraph (k)(6) of this section is detected at a retail outlet or at a wholesale purchaser-consumer facility not displaying the corporate, trade, or brand name of a refinery or any of its marketing subsidiaries, the following parties shall be deemed in violation:

(1) The retailer or wholesale purchaser-consumer, except as provided in paragraph (k)(5) of this section;

(2) The distributor (if any), except as provided in paragraph (k)(3) of this section;

(3) The carrier (if any), if the carrier caused the gasoline to violate the applicable standard; and

(4) The ethanol blender (if any) at whose ethanol blending plant the gasoline was produced, except as provided in paragraph (k)(6) of this section.

(k) *Defenses.* (1) In any case in which a carrier would be in violation under paragraph (f)(1) of this section, the carrier shall not be deemed in violation if he can demonstrate:

(i) Bills of lading, invoices, delivery tickets, loading tickets or other documents from the refiner or importer at whose refinery the gasoline was produced, the importer at whose facility the gasoline was imported, or the carrier, reseller, or distributor from whom the gasoline was received, which represented to the carrier that the gasoline was in compliance with the applicable standard when delivered to the carrier; and

(ii) Evidence of an oversight program conducted by the carrier, such as periodic sampling and testing of incoming gasoline, for monitoring the volatility of product stored or transported by that carrier; and

(iii) That the violation was not caused by the carrier or his employee or agent.

(2) In any case in which a refiner or importer would be in violation under paragraph (f)(2) or (h)(3) of this section, the refiner or importer shall not be deemed in violation if he can demonstrate:

(i) That the violation was not caused by him or his employee or agent; and

(ii) Test results, performed in accordance with the sampling and testing methodologies set forth in appendices D and E to 40 CFR part 80, which evidence that gasoline determined to be in violation was in compliance with the applicable standard when it was delivered to the next party in the distribution system.

(3) In any case in which a distributor or reseller would be in violation under paragraph (g)(1), (h)(1), (i)(2), or (j)(2), of this section, the distributor or reseller shall not be deemed in violation if he can demonstrate:

(i) That the violation was not caused by him or his employee or agent; and

(ii) Bills of lading, invoices, delivery tickets, loading tickets or other documents from the refiner at whose refinery the gasoline was produced, the importer at whose facility the gasoline was imported, or a carrier, reseller or distributor from whom the gasoline was received, which represented to the distributor or reseller that the gasoline was in compliance with the applicable standard when delivered to the distributor or reseller; and

(iii) Evidence of an oversight program conducted by the distributor or reseller, such as periodic sampling and testing of gasoline, for monitoring the volatility of gasoline that the distributor or reseller sells, supplies, offers for sale or supply, or transports.

(4) In any case in which a refiner would be in violation under paragraph (g)(3) or (i)(4) of this section, the refiner shall not be deemed in violation if he can demonstrate all of the following:

(i) Test results, performed in accordance with the sampling and testing methodologies set forth in appendices D and E to 40 CFR part 80 at the refinery at which the gasoline was produced, which evidence that the gasoline determined to be in violation was in compliance with the applicable standard when transported from the refinery; and

(ii) That the violation was not caused by him or his employee or agent; and

(iii) That the violation:

(A) Was caused by an act in violation of law (other than the act or this part), or an act of sabotage or vandalism, whether or not such acts are violations

of law in the jurisdiction where the violation of the requirements of this part occurred, or

(B) Was caused by the action of a reseller, an ethanol blender, or a retailer supplied by such reseller or ethanol blender, in violation of a contractual undertaking imposed by the refiner on such reseller or ethanol blender designed to prevent such action, and despite reasonable efforts by the refiner (such as periodic sampling and testing) to insure compliance with such contractual obligation, or

(C) Was caused by the action of a retailer who is supplied directly by the refiner (and not by a reseller), in violation of a contractual undertaking imposed by the refiner on such retailer designed to prevent such action, and despite reasonable efforts by the refiner (such as periodic sampling and testing) to insure compliance with such contractual obligation, or

(D) Was caused by the action of a distributor or an ethanol blender subject to a contract with the refiner for transportation of gasoline from a terminal to a distributor, ethanol blender, retailer or wholesale purchaser-consumer, in violation of a contractual undertaking imposed by the refiner on such distributor or ethanol blender designed to prevent such action, and despite reasonable efforts by the refiner (such as periodic sampling and testing) to insure compliance with such contractual obligation, or

(E) Was caused by a carrier or other distributor not subject to a contract with the refiner but engaged by him for transportation of gasoline from a terminal to a distributor, ethanol blender, retailer or wholesale purchaser-consumer, despite reasonable efforts by the refiner (such as specification or inspection of equipment) to prevent such action, or

(F) Occurred at a wholesale purchaser-consumer facility: *Provided, however,* That if such wholesale purchaser-consumer was supplied by a reseller or ethanol blender, the refiner must demonstrate that the violation could not have been prevented by such reseller's compliance with a contractual undertaking imposed by the refiner on such reseller as provided in paragraph (k)(4)(iii)(B) of this section.

(iv) In paragraphs (k)(4)(iii)(A) through (E) of this section, the term "was caused" means that the refiner must demonstrate by reasonably specific showings, by direct or circumstantial evidence, that the violation was caused or must have been caused by another.

(5) In any case in which a retailer or wholesale purchaser-consumer would

be in violation under paragraph (i)(1) or (j)(1) of this section, the retailer or wholesale purchaser-consumer shall not be deemed in violation if he can demonstrate that the violation was not caused by him or his employee or agent.

(6) In any case in which an ethanol blender would be in violation under paragraph (f)(3), (g)(4), (h)(4), (i)(5) or (j)(4) of this section, the ethanol blender shall not be deemed in violation if he can demonstrate:

(i) That the violation was not caused by him or his employee or agent; and

(ii) Bills of lading, invoices, delivery tickets, loading tickets or other documents from the refiner at whose refinery the gasoline was produced, the importer at whose facility the gasoline was imported, or the carrier, reseller, or distributor from whom the gasoline was received, which represented to the ethanol blender that the volatility of the gasoline when delivered to the ethanol blender was such that the addition of ethanol to the gasoline would not result in an exceedance of the applicable standard; and

(iii) Evidence of an oversight program conducted by the ethanol blender, such as periodic sampling and testing of gasoline, for monitoring the volatility of gasoline that the ethanol blender sells, supplies, offers for sale or supply, or transports; and

(iv) That the gasoline determined to be in violation contained no more than 10 percent ethanol (by volume) when it was delivered to the next party in the distribution system.

(7) In paragraphs (k)(1)(iii), (k)(2)(i), (k)(3)(i), (k)(4)(ii), (k)(5), and (k)(6)(i) of this section the respective party must demonstrate by reasonably specific showings, by direct or circumstantial evidence, that it or its employee or agent did not cause the violation.

5. 40 CFR part 52 is proposed to be amended by adding a new § 52.259 to read as follows:

§ 52.259 Oxygenated fuels program.

(a) *Regulatory standard.* No person shall first introduce into commerce within the South Coast Air Basin (SCAB or "control area") during the period November 1, 1994, to March 1, 1995, and each period of November 1 to March 1 thereafter ("control period") gasoline that has not been certified by the administrator as being in compliance with the following requirements:

(1) Contains at least 2.7% oxygen (by weight), as determined pursuant to paragraphs (b) and (c) of this section;

(2) Produces no more NO_x emissions from gasoline-fueled motor vehicles than gasoline that was widely available

within the control area during November 1, 1989 through March 1, 1990.

(b) *Sampling, testing, and oxygen content calculations.* (1) For the purpose of determining compliance with the standards listed in paragraphs (a) and (h) of this section the oxygen content of gasoline shall be determined by:

(i) Use of one of the sampling methodologies specified in appendix A of this section to obtain a representative sample of the gasoline to be tested;

(ii) Use of one of the testing methodologies specified in appendix B of this section to determine the mass concentration of each oxygenate in the gasoline sampled;

(iii) Calculation of the oxygen content of the gasoline sampled by multiplying the mass concentration of each oxygenate in the gasoline sampled by the oxygen mass concentration of the oxygenate set forth in paragraph (b)(2) of this section; and

(2) For purposes of this section, the oxygen mass concentrations of oxygenates are the following:

Oxygenate	Oxygen mass
Methanol	0.4993
Ethanol	0.3473
Propanols	0.2662
Butanols	0.2158
Pentanols	0.1815
Methyl Tertiary-Butyl Ether (MTBE)	0.1815
Ethyl Tertiary-Butyl Ether (ETBE)	0.1569
Hexanols	0.1566
Tertiary Amyl Methyl Ether (TAME)	0.1566

(3) *Examples—(i) Example 1.* Assume that a batch of gasoline is sampled by use of one of the methodologies set forth in appendix A of this section and tested by use of one of the test methodologies set forth in appendix B of this section. The gas chromatograph analysis indicates that the gasoline sampled contains an ethanol mass concentration of 9.85% (0.0985). The oxygen content of the gasoline sampled is calculated as follows:

Oxygen Content
= (Ethanol Mass Concentration in Gasoline Sample) (Oxygen Mass Concentration of Ethanol)
= (0.0985) (0.3473)
= 0.0342
= 3.42%

(ii) *Example 2.* Assume that a batch of gasoline is sampled by use of one of the methodologies set forth in appendix A of this section and tested by use of one of the methodologies set forth in appendix B of this section. The gas chromatograph analysis indicates that the gasoline sampled contains a methanol mass

concentration of 4.50% (0.0450) and an ethanol mass concentration of 2.25% (0.0225). The oxygen content of the gasoline sample is calculated as follows:

Oxygen Content

= (Methanol Mass Concentration in Gasoline Sample) (Oxygen Mass Concentration of Methanol) + (Ethanol Mass Concentration in Gasoline Sample) (Oxygen Mass Concentration of Ethanol)
 = (0.0450 (0.4993) + (0.0225) (0.3473))
 = 0.0225 + 0.0078
 = 0.0303
 = 3.03%

(c) Alternative Compliance Options.

(1) Each person subject to the standard specified in paragraph (a) of this section shall comply with such standard by means of the method set forth in either paragraph (c)(2) or (c)(3) of this section. Such person shall select the method he will use to determine compliance by means of the registration statement submitted pursuant to paragraph (d) of this section. A person subject to such standard who fails to submit a timely and complete registration statement as required by paragraph (d) of this section shall be deemed to have selected the compliance method set forth in paragraph (c)(2) of this section.

(2) As one alternative means of demonstrating compliance with the standard specified in paragraph (a) of this section, all gasoline first introduced into commerce by a person within the control area during the control period shall have an oxygen content of at least 2.7% (by weight), as determined by calculating the oxygen content of each discrete quantity of such gasoline according to the procedures set forth in paragraph (b) of this section.

(3)(i) As the second alternative means of demonstrating compliance with the standard specified in paragraph (a) of this section, all gasoline first introduced into commerce by a person within the control area during each calendar month of the control period shall have an average oxygen content of at least 2.7% (by weight).

(ii) The average oxygen content of gasoline first introduced into commerce by a person during a calendar month shall be calculated as follows:

(A) The oxygen content of each discrete quantity of gasoline in the possession of such person at the beginning of the calendar month shall be calculated according to the procedures set forth in paragraph (b) of this section.

(B) The oxygen content of each discrete quantity of gasoline in the possession of such person shall also be calculated according to the procedures set forth in paragraph (b) of this section each time during the calendar month that there is a change in its quantity

and/or its characteristics that would tend to affect its oxygen content. Such changes shall include, but not be limited to, the addition of any quantity of gasoline or of any quantity of an oxygenate to gasoline in the possession of such person.

(C) The number of gallons of gasoline first introduced into commerce within the control area during the calendar month at each oxygen content level determined according to paragraph (c)(3)(ii) (A) or (B) of this section shall be multiplied by such content to determine the total oxygen content of each such quantity of gasoline.

(D) The total oxygen content of all gasoline first introduced into commerce within the control area during the calendar month shall be determined by adding together the total oxygen content amounts determined in paragraph (c)(3)(ii)(C) of this section.

(E) The total oxygen content determined in paragraph (c)(3)(ii)(D) of this section shall be added to any oxygen credits lawfully transferred to such person pursuant to paragraph (c)(3)(iii) of this section.

(F) The total oxygen content determined in paragraph (c)(3)(ii)(E) of this section shall be divided by the total number of gallons of gasoline first introduced into commerce within the control area during the calendar month, resulting in the average oxygen content of such gasoline.

(iii) A person subject to the standard specified in paragraph (a) of this section who elects to demonstrate compliance under paragraph (c)(3) of this section may create oxygen credits, and may transfer such credits to another person for use in demonstrating compliance under this paragraph, in accordance with the following requirements:

(A) The amount of oxygen credits created by a person shall be equal to the difference between:

(1) The total oxygen content of all gasoline first introduced into commerce within the control area during the calendar month by such persons, as determined according to paragraph (c)(3)(ii) (A) through (D) of this section; and

(2) The total oxygen content required by paragraph (a) of this section, determined by multiplying the number of gallons of such gasoline by 0.0257.

(B) No transfer or use of oxygen credits shall be made by any person later than the final day of the calendar month in which such credits are created.

(d) *Registration.* [Reserved]

(e) *Labeling.* (1) Each gasoline pump stand from which gasoline is dispensed at a retail outlet or wholesale purchaser-consumer facility in the control area

shall be affixed during the control period with a legible and conspicuous label which states the type(s) of oxygenate contained in such gasoline and the oxygen content of such gasoline (percentage by weight). If the gasoline being dispensed from a pump stand does not contain any oxygenate, the pump stand shall be so labeled.

(2) Each invoice, loading ticket, bill of lading, delivery ticket and other document which accompanies the shipment of gasoline within the control area during the control period shall contain a legible and conspicuous statement which states the type(s) of oxygenate contained in such gasoline and the oxygen content of such gasoline (percentage by weight). If the gasoline being shipped does not contain any oxygenate, the document accompanying the shipment shall be so labeled. Such documents shall be retained by distributors, resellers, carriers, retailers and wholesale purchaser-consumers for at least two years, and shall be available for inspection by the Administrator or his authorized representative during such period.

(f) *Reporting and Recordkeeping.*

[Reserved]

(g) *Prohibited Acts.* [Reserved]

(h) *Minimum Oxygen Content Standard.* [Reserved]

Appendix A to § 52.259—Sampling Procedures [Reserved]

Appendix B to § 52.259—Testing Procedures [Reserved]

6. 40 CFR part 52 is proposed to be amended by adding a new § 52.260 to read as follows:

§ 52.260 Ultra clean motor vehicle backstop program.

(a) *Applicability of 40 CFR part 85 subpart S and 40 CFR part 86.* For the purposes of this section, except as otherwise provided, the definitions and requirements of 40 CFR part 85 subpart S (Recall Regulations) and 40 CFR part 86 (Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines: Certification and Test Procedures) apply.

(b) *Additional definitions—Control area* means the South Coast Air Basin (SCAB).

Ozone-forming volatile organic compounds includes tailpipe, evaporative, refueling, and running loss evaporative emissions, adjusted for reactivity.

Refueling emissions means ozone-forming volatile organic compounds emitted from a vehicle during refueling in conjunction with the use of either a typically effective vapor recovery

system of the type required by the State of California (adjusted for the rate of recovery system absence, malfunction, or improper use as determined by the Administrator), or an onboard evaporative refueling emission control system.

(c) *Prohibition.* No person shall sell, offer for sale, introduce or deliver for introduction into commerce within the control area, or to a resident of the control area, or to a business located in the control area, any new motor vehicle or engine that is otherwise subject to the emission standards under paragraph (d) of this section, unless the Administrator has issued such vehicle or engine a certificate certifying compliance with the applicable requirements of this section.

(d) *Certification and in-use standards.*

(1) Total emissions from 1977¹ and later model year light-duty vehicles and light-duty trucks with loaded vehicle weight less than 3,751 pounds affected by this section shall not exceed:

(i) *Ozone-forming volatile organic compounds.* 0.20 gram per mile.

(ii) *Carbon Monoxide.* 3.4 gram per mile.

(2) Total emissions from 1997¹ and later model year light-duty trucks exceeding 3,750 pounds loaded vehicle weight vehicles affected by this section shall not exceed:

(i) *Ozone-forming volatile organic compounds.* 0.26 gram per mile.

(ii) *Carbon Monoxide.* 3.4 gram per mile.

(3) Total emissions from 1997¹ and later model year heavy-duty vehicles less than 14,001 pounds Gross Vehicle Weight Rating shall not exceed:

(i) *Ozone-forming volatile organic compounds.* 0.50 gram per mile.

(ii) *Carbon Monoxide.* 4.3 gram per mile.

(e) *Test Procedures.* The Administrator shall employ such test and compliance procedures in measuring and calculating total emissions for purposes of this section as he determines appropriate. In making this determination, the Administrator shall specifically consider the following.

(1) The measurement of ozone-forming volatile organic compound emissions shall include a diurnal temperature profile representative of high-temperature, high-ozone episodes in the South Coast Air Quality Basin.

(2) The measurement of carbon monoxide emissions may include temperatures as low as 50 degrees Fahrenheit.

(3) The procedures shall reflect the actual in-use patterns of vehicles, including periods of non-use.

(f) *Emission credits.* The Administrator shall grant a manufacturer an appropriate amount of credits towards compliance with the emission standards prescribed under paragraph (d) of this section for selling vehicles that are certified to achieve emission levels below those specified. A manufacturer may use such credits to demonstrate compliance with the standards in the model year in which the credits were earned or in following model years, or may transfer some or all of the credits for use by one or more other manufacturers in demonstrating compliance with such emission standards. Credits granted pursuant to this subparagraph shall not be used to modify in any way other emissions standards or other requirements. The Administrator may make credits available for use after consideration of enforceability, environmental and economic factors and upon such terms and conditions as he finds appropriate. Credits may not be used to modify the applicable family limit for a class or category or vehicles once produced in a manner which would avoid a required remedy under section 207(c) of the Clean Air Act and 40 CFR part 85 subpart S of a nonconformity with the requirements of this section.

(g) *Selection of fuels.* [Reserved]

(h) *Fuel availability and distribution.* [Reserved]

(i) *Compliance with standards (recall).* In determining compliance by vehicles and engines in actual use with the emission standards prescribed under this section by testing in-use vehicles on certification-type fuels, only vehicles that have been obviously abused or tampered with in a manner that would likely affect emissions performance may be excluded from the sample tested pursuant to section 207(c) of the Clean Air Act (with appropriate adjustments to the above standards determined by the Administrator to be necessary to reflect the exclusion of such vehicles from the sample). The Administrator may require manufacturer to remedy nonconforming engines or vehicles pursuant to section 207(c) of the Clean Air Act and 40 CFR part 85 subpart S either (1) When a substantial number of vehicles fails to comply with the applicable emissions standards prescribed under this section or (2) When the average emissions performance of the tested sample does not satisfy the applicable emissions standards prescribed under this section. Recall procedures established under this

subsection apply only to standards given in paragraph (d) of this section.

(j) *Adjustments for reactivity.* [Reserved]

(k) *Restrictions on operation of non-complying vehicles after January 1, 2010.* [Reserved]

7. 40 CFR part 52 is proposed to be amended by adding a new § 52.261 to read as follows:

§ 52.261 Reformulated gasoline program.

(a) *Regulatory standard.* No person shall first introduce into commerce within the South Coast Air Basin (SCAB or "control area") during the period April 1, 1994 to October 31, 1994 and each period of April 1 to October 31 thereafter, ("control period") gasoline that has not been certified by the administrator as being in compliance with the following requirements:

(1) Produces no more than 15 percent less ozone-forming VOC emissions, adjusted for reactivity, than would be produced from conventional gasoline-fueled motor vehicles operating on gasoline controlled to 7.8 RVP during months designated for 7.8 RVP during the ozone season.

(2) Produces no more than 15 percent less ozone-forming VOC emissions, adjusted for reactivity, than would be produced from conventional gasoline-fueled motor vehicles operating on gasoline controlled to 7.0 RVP during months designated for 7.0 RVP during the ozone season.

(3) Produces no more NO_x emissions from gasoline-fueled motor vehicles than gasoline that was widely available within the control area during April 1, 1989 through October, 1989.

(b) *Certification and compliance procedures.* [Reserved]

8. 40 CFR part 52 is proposed to be amended by adding a new § 52.262 to read as follows:

§ 52.262 Rail, aircraft & ship operations.

(a) *Actual Rule—(1) Applicability.* The requirements of this section apply to any owner or operator of any line-haul locomotive or aircraft operated within the South Coast Air Basin (SCAB or the "control area") or of any ocean-going ship operating between ports in Los Angeles or Orange County and a port or ports outside the control area.

(2) *1989 Baseline VOC Emissions.* Each owner or operator of a subject line-haul locomotive, aircraft, or ship which operated in the control area in 1989 who wishes to receive marketable permits for operation in 1996 and later years shall by January 1, 1993 report to the Administrator (or other enforcing authority), using methods and

¹ EPA is considering effective dates between 1997 and 2002, and requests comments on all dates in this range.

assumptions and in a form he specifies, the 1989 baseline VOC emissions in the covered area due to operation of subject units under its control.

(3) *Marketable Permits.* By July 1, 1994 the Administrator (or other enforcing authority) shall issue to each owner or operator with 1989 baseline VOC emissions marketable permits denominated in pounds of VOC applicable to operation of line-haul locomotives, aircraft, or ships in the control area during 1996. Each owner or operator shall receive permits in the amount of its actual 1989 baseline VOC emissions as determined by the Administrator (or other enforcing authority), multiplied by an annually compounded growth factor of one percent per year elapsed between January 1, 1990 and January 1, 1996. The Administrator (or other enforcing authority) shall repeat this issuance annually for successive years of operation. Permits shall be transferable.

(4) *Prohibition.* (i) No person shall operate a line-haul locomotive, aircraft, or ship in the control area between April 1 and October 30, 1996, or during these months of any subsequent year, unless it possesses a quantity of permits issued under paragraph (a)(3) of this section applicable to that year equal in amount to the VOC generated by such operation, as determined under paragraph (a)(6) of this section. The permits may have been initially granted based on the 1989 operation of any of the source types covered by this section, not necessarily by the same source type with respect to which they are surrendered.

(ii) No person shall duplicate, counterfeit, or otherwise alter for purposes of evasion a marketable permit issued under paragraph (a)(3) of this section.

(5) *Exclusions.* Cargo-related emissions are not subject to this section. Permits apply only to the emissions of the propulsion and/or auxiliary power engines and fuel systems.

(6) *Determination of VOC emissions resulting from operations.* [Reserved]

(b) *Committal Rule—(1) Categories to be controlled.* (i) Locomotives.

(ii) Piston and jet aircraft.

(iii) Ocean-going ships operating between the South Coast Air Basin and a port or ports outside California.

(2) *Provisions.* EPA commits to publish rules to control VOC emissions from the propulsion and auxiliary power systems of sources described in paragraph (b)(1) of this section on the schedule described in paragraph (b)(3) of this section.

(3) *Promulgation schedule and emission limit.* Rules will be published by January 1, 1995, which limit growth in

overall VOC emissions to one percent per year, with a limit on VOC of 126 percent of 1987 levels applicable in 2010 and thereafter.

9. 40 CFR part 52 is proposed to be amended by adding a new § 52.264 to read as follows:

§ 52.264 Control strategy and regulations: Photochemical oxidants (hydrocarbons) and carbon monoxide backstop control measures for the South Coast Air Basin and Coastal waters within three miles of Orange and Los Angeles Counties.

(a) *General provisions—(1) Applicability.* The provisions of § 52.264 shall apply to all sources located in the South Coast Air Basin (SCAB) and coastal waters within three miles of Los Angeles or Orange County.

(2) *Compliance dates.* Compliance with the requirements of all rules is required upon promulgation unless otherwise indicated by compliance dates contained in specific rules. This paragraph shall not operate to provide additional time for compliance under section 113(d) of the Act, 42 U.S.C. 7413(d), for sources subject to compliance upon promulgation.

(3) *Definitions.* *Actual emissions* means the actual quantity of VOC emissions from an emissions source during a particular time period.

Actual emissions rate means the actual quantity of VOC emissions from an emissions source per unit of actual production or throughput.

Administrator means the Administrator of the United States Environmental Protection Agency or that person's designee.

Agency means the United States Environmental Protection Agency.

Air contaminant means any solid, liquid, or gaseous matter, any odor, or any form of energy, that is capable of being released into the atmosphere from an emission source.

Air pollution means the presence in the atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant, or animal life, to health, or to property, or to unreasonably interfere with the enjoyment of life or property.

Air pollution control equipment means any equipment or facility of a type intended to eliminate, prevent, reduce or control the emission of specified air contaminants to the atmosphere.

Allowable emissions rate means the most stringent of the applicable standards in 40 CFR, parts 60 and 61; the applicable implementation plan; or a federally enforceable permit.

Baseline emissions means the emissions calculated using the lower of the actual or allowable emissions rate for each source within a facility and actual capacity utilization and hours of operation for the baseline year stated in a rule for a given pollutant (e.g., pounds of VOC per day).

Capture system means all equipment (including, but not limited to, hoods, ducts, fans, ovens, dryers, etc.) used to contain, collect, and transport an air pollutant to a control device.

Coating applicator means any equipment or device including but not limited to cloth, rollers, brushes, spray guns, or dip tanks used to apply a coating.

Control device means equipment (such as an afterburner or adsorber) used to remove or prevent the emission of air pollutants from a contaminated exhaust stream.

Day means the consecutive 24 hours beginning at 12:00 AM (midnight) local time.

Emissions rate means the total mass of VOCs discharged from an emissions source into the atmosphere per unit of production or throughput (e.g., pound VOC/gallon of coating solids).

Emissions source means any building, structure, facility, property equipment, device, container, or any combination thereof, at, from, or by reason which VOC is emitted or discharged into the atmosphere.

Facility means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control), except the activities of any marine vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same two-digit code) as described in the "Standard Industrial Classification Manual, 1987" (incorporated by reference as specified in 40 CFR 52.264.b).

Federally enforceable means all limitations and conditions which are enforceable by the Administrator including those requirements developed pursuant to 40 CFR, parts 60 and 61; requirements within any applicable implementation plan; and any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR, part 51, subpart I, and 40 CFR 51.166.

Incinerator means a combustion apparatus in which refuse is burned.

Monitor means to measure and record.

Organic compound means any compound of carbon, excluding carbon monoxide, carbon dioxide, and carbonic acid, metallic carbides, carbonates, and ammonium carbonate.

Organic vapor means the gaseous phase of an organic compound or a mixture of organic compounds present in the atmosphere.

Owner or operator means any person who owns, operates, leases, controls, or supervises an emissions source or air pollution control equipment.

Person means any individual, corporation, partnership, association, State, municipality, political subdivision of a State; any agency, department, or instrumentality of the United States; and any officer, agent, or employee thereof.

Process means any stationary emission source other than a fuel combustion emission source or an incinerator.

Standard conditions means a temperature of 70°F and a pressure of 14.7 psia.

Stationary emission source and **Stationary source** mean an emission source which is not self-propelled.

Volatile organic compound (VOC) means any organic compound which participates in atmospheric photochemical reactions. This includes any organic compound other than the following compounds: methane, ethane, methyl chloroform (1,1,1-trichloroethane), CFC-113 (trichlorotrifluoroethane), methylene chloride, (dichloromethane) CFC-11 (trichlorofluoromethane), CFC-12 (dichlorodifluoromethane), CFC-22 (chlorodifluoromethane), FC-23 (trifluoromethane), CFC-114 (dichlorotetrafluoroethane), CFC-115 (chloropentafluoroethane), HCFC-123 (dichlorotrifluoroethane), HFC-134a (tetrafluoroethane), HCFC-141b (dichlorofluoroethane) and HCFC-142b (chlorodifluoroethane). These compounds have been determined to have negligible photochemical reactivity. For the purposes of determining compliance with emissions limits, VOC will be measured by the approved test methods. Where such a method inadvertently measures compounds with negligible photochemical reactivity, an owner or operator may exclude these negligibly reactive compounds when determining compliance with an emissions standard.

(4) **Test methods and procedures—(i) Coatings, inks, and fountain solutions.** The following test methods and procedures shall be used to determine the VOC content of as applied coatings, inks, and fountain solutions to determine compliance with the limitations set forth in section 52.264.

(A) **Sampling:** Samples collected for analyses shall be one-liter taken into a one-liter container at a location and time such that the sample will be representative of the coating as applied (i.e., the sample shall include any dilution solvent or other VOC added during the manufacturing process). The container must be tightly sealed immediately after the sample is taken. Any solvent or other VOC added after the sample is taken must be measured and accounted for in the calculations in paragraph (a)(4)(i)(C) of this section. For multiple package coatings, separate samples of each component shall be obtained. A mixed sample shall not be obtained as it will cure in the container. Sampling procedures shall follow the guidelines presented in:

(1) ASTM D3925-81 (1985) Standard Practice for Sampling Liquid Paints and Related Pigment Coating. This practice is incorporated by reference as specified in 40 CFR 52.264(b).

(2) ASTM E300 Standard Practice for Sampling Industrial Chemicals. This practice is incorporated by reference as specified in 40 CFR 52.264(b).

(B) **Analyses:** The applicable analytical methods specified below shall be used to determine the composition of coatings, inks, or fountain solutions as applied.

(1) Method 24 of 40 CFR part 60, appendix A, shall be used to determine the VOC content and density of coatings. If it is demonstrated to the satisfaction of the Administrator that plant coating formulation data are equivalent to Method 24 results, formulation data may be used. In the event of any inconsistency between a Method 24 test and a facility's formulation data, the Method 24 test will govern.

(2) Method 24A of 40 CFR part 60, appendix A, shall be used to determine the VOC content and density of rotogravure printing inks and related coatings. If it is demonstrated to the satisfaction of the Agency that the plant coating formulation data are equivalent to Method 24A results, formulation data may be used. In the event of any inconsistency between a Method 24A test and a facility's formulation data, the Method 24A test will govern.

(3) The following ASTM methods are the analytical procedures for determining VOC:

(i) ASTM D1475-85: Standard test method for density of paint, varnish, lacquer and related products. This test method is incorporated by reference as specified in 40 CFR 52.264(b).

(ii) ASTM D2369-87: Standard test method for volatile content of a coating. This test method is incorporated by

reference as specified in 40 CFR 52.264(b). For multicomponent coatings, EPA is in the process of revising Method 24. The following minor modifications should be used for multicomponent coatings. All components of the coating are to be weighed in the proper proportion into the analysis container and mixed together just prior to analysis and the mixture is allowed to stand for at least one hour but no more than 24 hours prior to being oven dried at 110 degrees celsius for one hour.

(iii) ASTM D3792-86: Standard test method for water content of water-reducible paints by direct injection into a gas chromatograph. This test method is incorporated by reference as specified in 40 CFR 52.264(b).

(iv) ASTM D4017-81 (1987): Standard test method for water content in paints and paint materials by the Karl Fischer method. This test method is incorporated by reference as specified in 40 CFR 52.264(b).

(v) ASTM D4457-85: Standard test method for determination of dichloromethane and 1,1,1-trichloroethane in paints and coatings by direct injection into a gas chromatograph. (The procedure delineated above can be used to develop protocols for any compounds specifically exempted from the definition of VOC.) This test method is incorporated by reference as specified in 40 CFR 52.264(b).

(vi) ASTM D2697-86: Standard test method for volume non-volatile matter in clear or pigmented coatings. This test method is incorporated by reference as specified in 40 CFR 52.264(b).

(vii) ASTM 03980-87: Standard practice for interlaboratory testing of paint and related materials. This practice is incorporated by reference as specified in 40 CFR 52.264(b).

(viii) ASTM E180-85: Practice for determining the precision data of ASTM methods for analysis and testing of industrial chemicals. This practice is incorporated by reference as specified in 40 CFR 52.264(b).

(ix) ASTM D2372-85: Standard method of separation of vehicle from solvent-reducible paints. This method is incorporated by reference as specified in 40 CFR 52.264(b).

(4) Use of an adaptation to any of the analytical methods specified in paragraphs (a)(4)(i)(B) (1), (2), and (3) of this section may be approved by the Administrator on a case-by-case basis. An owner or operator must submit sufficient documentation for the Administrator to find that the analytical methods specified in paragraphs (a)(4)(i)(B) (1), (2), and (3) of this section

will yield inaccurate results and that the proposed adaptation is appropriate.

(C) *Calculations:* Calculations for determining the VOC content, water content, and the content of any compounds which are specifically exempted from the definition of VOC of coatings, inks, and fountain solutions as applied shall follow the guidance provided in the following documents.

(1) "A Guide for Surface Coating Calculation" EPA-340/1-86-018 (which is available from the National Technical Information Services, 5285 Port Royal Road, Springfield, Virginia, 22161)

(2) "Procedures for Certifying Quantity of Volatile Organic Compounds Emitted by Paint, Ink and Other Coatings" (revised June 1986) EPA-450/3-84-019 (which is available from the National Technical Information Services, 5285 Port Royal Road, Springfield, Virginia, 22161)

(3) "A Guide for Graphic Arts Calculations" August 1988 EPA-340/1-88-003 (which is available from the National Technical Information Services, 5285 Port Royal Road, Springfield, Virginia, 22161)

(ii) *Automobile or Light-Duty Truck Test Protocol.* The protocol for testing, including determining the transfer efficiency, of coating applicators at topcoat operations at an automobile assembly facility shall follow the procedure in: "Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations" December 1988 EPA-450/3-88-018 (which is available from the National Technical Information Services, 5285 Port Royal Road, Springfield, Virginia, 22161).

(iii) *Capture System Efficiency Test Protocols—(A) Applicability.* The requirements of paragraph (a)(4)(iii)(B) of this section shall apply to all VOC emitting processes employing capture equipment (e.g., hoods, ducts), except those cases noted below.

(1) If a source installs a permanent total enclosure (PTE) that meets U.S. EPA specifications, and which directs all VOC to a control device, then the source is exempted from the requirements described in paragraph (a)(4)(iii)(B) of this section. The U.S. EPA specifications to determine whether a structure is considered a PTE are given in Procedure T of appendix B of 40 CFR 52.742. In this instance, the capture efficiency is assumed to be 100 percent and the source is still required to measure control efficiency using appropriate test methods as specified in paragraph (a)(4)(iv) of this section.

(2) If a source uses a control device designed to collect and recover VOC

(e.g., carbon adsorber), an explicit measurement of capture efficiency is not necessary provided that the conditions given below are met. The overall control of the system can be determined by directly comparing the input liquid VOC to the recovered liquid VOC. The general procedure for use in this situation is given in 40 CFR 60.433, with the following additional restrictions:

(i) The source must be able to equate solvent usage with solvent recovery on a 24-hour (daily) basis, rather than a 30-day weighted average, within 72 hours following the 24-hour period. In addition, one of the following two criteria must be met:

(ii) The solvent recovery system (i.e., capture and control system) must be dedicated to a single process line (e.g., one process line venting to a carbon adsorber system), or

(iii) If the solvent recovery system controls multiple process lines, then the source must be able to demonstrate that the overall control (i.e., the total recovered solvent VOC divided by the sum of liquid VOC input to all process lines venting to the control system) meets or exceeds the most stringent standard applicable for any process line venting to the control system.

(B) *Specific Requirements.* The capture efficiency of a process line shall be measured using one of the four protocols given below. Any error margin associated with a test protocol may not be incorporated into the results of a capture efficiency test. If these techniques are not suitable for a particular process, then the source must present an alternative capture efficiency protocol and obtain approval for it by the Administrator as a SIP or FIP revision.

(1) *Gas/gas method using temporary total enclosure (TTE).* The U.S. EPA specifications to determine whether a temporary enclosure is considered a TTE are given in Procedure T of appendix B of 40 CFR 52.741. The capture efficiency equation to be used for this protocol is:

$$CE = G_w / (G_w + F_w)$$

where

CE = capture efficiency, decimal fraction
G_w = mass of VOC captured and delivered to control device using a TTE

F_w = mass of fugitive VOC that escapes from a TTE Procedure G.2 contained in appendix B of 40 CFR 52.741 is used to obtain G_w. Procedure F.1 in appendix B (as referenced above) is used to obtain F_w.

(2) *Liquid/gas method using TTE.* The U.S. EPA specifications to determine whether a temporary enclosure is considered a TTE are given in Procedure T of appendix B of 40 CFR 52.741. The

capture efficiency equation to be used for this protocol is:

$$CE = (L - F_w) / L$$

where

CE = capture efficiency, decimal fraction
L = mass of liquid VOC input to process
F_w = mass of fugitive VOC that escapes from a TTE Procedure L contained in appendix B of 40 CFR 52.741 is used to obtain L. Procedure F.1 in appendix B (as referenced above) is used to obtain F_w.

(3) *Gas/gas method using the building or room (building or room enclosure) in which the affected source is located as the enclosure and in which "F" and "G" are measured while operating only the affected facility.* All fans and blowers in the building or room must be operated as they would under normal production. The capture efficiency equation to be used for this protocol is:

$$CE = G / (G + F_g)$$

where

CE = capture efficiency, decimal fraction
G = mass of VOC captured and delivered to control device
F_g = mass of fugitive VOC that escapes from building enclosure Procedure G.2 contained in appendix B of 40 CFR 52.741 is used to obtain G. Procedure F.2 in appendix B as referenced above is used to obtain F_g.

(4) *Liquid/gas method using the building or room (building or room enclosure) in which the affected source is located as the enclosure and in which "F" and "L" are measured while operating only the affected facility.* All fans and blowers in the building or room must be operated as they would under normal production. The capture efficiency equation to be used for this protocol is:

$$CE = (L - F_g) / L$$

where

CE = capture efficiency, decimal fraction
L = mass of liquid VOC input to process
F_g = mass of fugitive VOC that escapes from building enclosure
Procedure L contained in Appendix B of 40 CFR 52.741 is used to obtain L. Procedure F.2 in appendix B (as referenced above) is used to obtain F_g.

(C) *Recordkeeping and reporting.* (1) All affected facilities must maintain a copy of the capture efficiency protocol submitted to EPA on file. All results of the appropriate test methods and capture efficiency protocols must be reported to EPA within sixty (60) days of the test date. A copy of the results must be kept on file with the source for a period of three (3) years.

(2) If any changes are made to capture or control equipment, then the source is required to notify EPA of these changes and a new test may be required by EPA.

(3) The source must notify the Administrator 30 days prior to performing any capture efficiency or control test. At that time, the source must notify the Administrator which capture efficiency protocol and control device test methods will be used.

(4) Sources utilizing a PTE must demonstrate that this enclosure meets the requirement given in Procedure T (in appendix B of 40 CFR 52.741) for a PTE during any testing of their control device.

(5) Sources utilizing a TTE must demonstrate that their TTE meets the requirements given in Procedure T (in appendix B of 40 CFR 52.741) for a TTE during testing of their control device. The source must also provide documentation that the quality assurance criteria for a TTE have been achieved.

(iv) *Control Device Efficiency Testing and Monitoring.* (A) The control device efficiency shall be determined by simultaneously measuring the inlet and outlet gas phase VOC concentrations and gas volumetric flow rates in accordance with the gas phase test methods specified in paragraph (a)(4)(vi) of this section.

(B) Any owner or operator that uses an afterburner or carbon adsorber to comply with any section of § 52.264 shall use U.S. EPA-approved continuous monitoring equipment which is installed, calibrated, maintained, and operated according to vendor specifications at all times when the afterburner or carbon adsorber is in use. The continuous monitoring equipment must monitor the following parameters:

(1) Combustion chamber temperature of each afterburner.

(2) Temperature rise across each catalytic afterburner bed or VOC concentration exhaust.

(3) The VOC concentration of each carbon adsorption bed exhaust.

(v) *Overall Efficiency.* (A) The overall efficiency of the emission control system shall be determined as the product of the capture system efficiency and the control device efficiency or by the liquid/liquid test protocol as specified in 40 CFR 60.433 (and revised by paragraph (a)(4)(iii)(A)(2) of this section for each solvent recovery system. In those cases in which the overall efficiency is being determined for an entire line, the capture efficiency used to calculate the product of the capture and control efficiency is the total capture efficiency over the entire line.

(B) The overall efficiency of the capture system and control device used to control VOC emissions from a paper, fabric, film, coil, or miscellaneous metal parts and products coating line, as

determined by the test methods and procedures specified in paragraphs (a)(4)(iii), (a)(4)(iv), and (a)(4)(v)(A) of this section, shall be no less than the equivalent overall efficiency which shall be calculated by the following equation:

$$E = [(VOC_a - VOC_i) / VOC_a] \times 100$$

where:

E = Equivalent overall efficiency of the capture system and control device as a percentage,

VOC_a = Actual VOC content of a coating, or the daily-weighted average VOC content of two or more coatings (if more than one coating is used), as applied to the subject coating line as determined by the applicable test methods and procedures specified in paragraph (a)(4)(i) of this section in units of kg VOC/l (lb VOC/gal) of coating solids as applied, and

VOC_i = The VOC emission limit specified in units of kg VOC/l (lb VOC/gal) of coating solids as applied.

(vi) *Volatile Organic Compound Gas Phase Source Test Methods.*

The methods in 40 CFR part 60, appendix A, delineated below shall be used to determine control device efficiencies.

(A) 40 CFR part 60, appendix A, method 18, 25, or 25A, as appropriate to the conditions at the site, shall be used to determine VOC concentration. Method selection shall be based on consideration of the diversity of organic species present and their total concentration and on consideration of the potential presence of interfering gases. Except as indicated in paragraphs (a)(4)(vi)(A)(1) and (2) of this section, the test shall consist of three separate runs, each lasting a minimum of 60 min, unless the Administrator determines that process variables dictate shorter sampling times.

(1) When the method is to be used to determine the efficiency of a fixed-bed carbon adsorption system with a common exhaust stack for all the individual adsorber vessels, the test shall consist of three separate runs, each coinciding with one or more complete sequences through the adsorption cycles of all the individual adsorber vessels.

(2) When the method is to be used to determine the efficiency of a carbon adsorption system with individual exhaust stacks for each adsorber vessel, each adsorber vessel shall be tested individually. The test for each adsorber vessel shall consist of three separate runs. Each run shall coincide with one or more complete adsorption cycles.

(B) 40 CFR part 60, appendix A, method 1 or 1A shall be used for sample and velocity traverses.

(C) 40 CFR part 60, appendix A, method 2, 2A, 2C, or 2D shall be used for velocity and volumetric flow rates.

(D) 40 CFR part 60, appendix A, method 3 shall be used for gas analysis.

(E) 40 CFR part 60, appendix A, method 4 shall be used for stack gas moisture.

(F) 40 CFR part 60, appendix A, methods 2, 2A, 2C, 2D, 3, and 4 shall be performed, as applicable, at least twice during each test run.

(G) Use of an adaptation to any of the test methods specified in paragraphs (a)(4)(vi) (A), (B), (C), (D), (E), and (F) of this section may be approved by the Administrator on a case-by-case basis. An owner or operator must submit sufficient documentation for the Administrator to find that the test methods specified in paragraphs (a)(4)(vi) (A), (B), (C), (D), (E), and (F) of this section will yield inaccurate results and that the proposed adaptation is appropriate.

(vii) *Leak Detection Methods for Volatile Organic Compounds.*

Owners or operators required by the various subparts of this regulation to carry out a leak detection monitoring program shall comply with the following requirements:

(A) *Leak Detection Monitoring.* (1) Monitoring shall comply with 40 CFR part 60, appendix A, method 21.

(2) The detection instrument shall meet the performance criteria of method 21.

(3) The instrument shall be calibrated before use on each day of its use by the methods specified in method 21.

(4) Calibration gases shall be:

(i) Zero air (less than 10 ppm of hydrocarbon in air), and

(ii) A mixture of methane or n-hexane and air at a concentration of approximately, but no less than, 10,000 ppm methane or n-hexane.

(5) The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in method 21.

(B) When equipment is tested for compliance with no detectable emissions as required, the test shall comply with the following requirements:

(1) The requirements of paragraphs (a)(4)(vii)(A)(1) through (vii)(A)(5) of this section shall apply.

(2) The background level shall be determined as set forth in method 21.

(C) Leak detection tests shall be performed consistent with:

(1) "APTI Course SI 417 Controlling Volatile Organic Compound Emissions from Leaking Process Equipment" EPA-450/2-82-015 (which is available from the National Technical Information Services, 5285 Port Royal Road, Springfield, Virginia, 22161)

(2) "Portable Instrument User's Manual for Monitoring VOC Sources" EPA-340/1-86-015 (which is available from the National Technical Information Services, 5285 Port Royal Road, Springfield, Virginia, 22161)

(3) "Protocols for Generating Unit-Specific Emission Estimates for Equipment Leaks of VOC and VHAP" EPA-450/3-88-010 (which is available from the National Technical Information Services, 5285 Port Royal Road, Springfield, Virginia, 22161)

(4) "Petroleum Refinery Enforcement Manual" EPA-340/1-80-008 (which is available from the National Technical Information Services, 5285 Port Royal Road, Springfield, Virginia, 22161)

(viii) Bulk Gasoline Delivery System Test Protocol

(A) The method for determining the emissions of gasoline from a vapor recovery system are delineated in 40 CFR part 60, subpart XX, section 60.503.

(B) Other tests shall be performed consistent with:

(1) "Inspection Manual for Control of Volatile Organic Emissions from Gasoline Marketing Operations: appendix D" EPA-340/1-80-012 (which is available from the National Technical Information Services, 5285 Port Royal Road, Springfield, Virginia 22161)

(2) "Control of Hydrocarbons from Tank Truck Gasoline Loading Terminals: appendix A" EPA-450/2-77-026 (which is available from the National Technical Information Services, 5285 Port Royal Road, Springfield, Virginia 22161)

(ix) *Vapor Pressure of Volatile Organic Liquids.* (A) If the VOL consists of only a single compound, the vapor pressure shall be determined by ASTM Method D2879-86 (incorporated by reference as specified in 40 CFR 52.264.b) or the vapor pressure may be obtained from a published source such as: Boublik, T., V. Fried and E. Hala, "The Vapor Pressure of Pure Substances," Elsevier Scientific Publishing Co., New York (1973), Perry's Chemical Engineer's Handbook, McGraw-Hill Book Company (1984), CRC Handbook of Chemistry and Physics, Chemical Rubber Publishing Company (1986-87), and Lange's Handbook of Chemistry, John A. Dean, editor, McGraw-Hill Book Company (1985).

(B) If the VOL is a mixture, the vapor pressure shall be determined by ASTM Method D2879-86 (incorporated by reference as specified in 40 CFR part 52.) or by the following equation:

$$P_{vol} = \sum_{i=1}^n P_i X_i$$

where:

P_{vol} = Total vapor pressure of the mixture,
 n = Number of components in the mixture,
 i = Subscript denoting an individual component,

P_i = Vapor pressure of a component determined in accordance with paragraph (a)(4)(ix)(A) of this section, and

X_i = Mole fraction of the component in the total mixture.

(x) *Vapor Pressure of Organic Material or Solvent.* (A) If the organic material or solvent consists of only a single compound, the vapor pressure shall be determined by ASTM Method D2879-86 (incorporated by reference as specified in 40 CFR 52.264.b) or the vapor pressure may be obtained from a published source such as: Boublik, T., V. Fried and E. Hala, "The Vapor Pressure of Pure Substances," Elsevier Scientific Publishing Co., New York (1973), Perry's Chemical Engineer's Handbook, McGraw-Hill Book Company (1984), CRC Handbook of Chemistry and Physics, Chemical Rubber Publishing Company (1986-87), and Lange's Handbook of Chemistry, John A. Dean, editor, McGraw-Hill Book Company (1985).

(B) If the organic material or solvent is in a mixture made up of both organic material compounds and compounds which are not organic material, the vapor pressure shall be determined by the following equation:

$$P_{om} = \frac{\sum_{i=1}^n P_i X_i}{\sum_{i=1}^n X_i}$$

where:

P_{om} = Total vapor pressure of the portion of the mixture which is composed of organic material,

n = Number of organic material components in the mixture,

i = Subscript denoting an individual component,

P_i = Vapor pressure of an organic material component determined in accordance with paragraph (a)(4)(X)(A) of this section, and

X_i = Mole fraction of the organic material component of the total mixture.

(C) If the organic material or solvent is in a mixture made up of only organic material compounds, the vapor pressure shall be determined by ASTM Method D2879-86 (incorporated by reference as specified in 40 CFR 52.264.b) or by the above equation.

(xi) *Vapor Pressure of Volatile Organic Compounds.* (A) If the VOC consists of only a single compound, the vapor pressure shall be determined by ASTM Method D2879-86 (incorporated

by reference as specified in 40 CFR 52.264.b) or the vapor pressure may be obtained from a published source such as: Boublik, T., V. Fried and E. Hala, "The Vapor Pressure of Pure Substances," Elsevier Scientific Publishing Co., New York (1973), Perry's Chemical Engineer's Handbook, McGraw-Hill Book Company (1984), CRC Handbook of Chemistry and Physics, Chemical Rubber Publishing Company (1986-87), and Lange's Handbook of Chemistry, John A. Dean, editor, McGraw-Hill Book Company (1985).

(B) If the VOC is in a mixture made up of both VOC compounds and compounds which are not VOC, the vapor pressure shall be determined by the following equation:

$$P_{voc} = \frac{\sum_{i=1}^n P_i X_i}{\sum_{i=1}^n X_i}$$

where:

P_{voc} = Total vapor pressure of the portion of the mixture which is composed of VOC,
 n = Number of VOC components in the mixture,

i = Subscript denoting an individual component,

P_i = Vapor pressure of a VOC component determined in accordance with paragraph (a)(4)(xi)(A) of this section, and

X_i = Mole fraction of the VOC component of the total mixture.

(C) If the VOC is in a mixture made up of only VOC compounds, the vapor pressure shall be determined by ASTM Method D2879-86 (incorporated by reference as specified in 40 CFR 52.264.b) or by the above equation.

(b) *Group A Backstop Measures*—(1) Industrial and Commercial Solvents/Coatings (Format # 1)—(i) *Definitions.*

(A) For the purpose of this rule, the general definitions in paragraph (a)(3) of this section apply.

(B) For the purpose of this rule, the following definitions also apply:

Adhesives means any substance or mixture of substances intended to serve as a joining compound.

Aerospace component means the fabricated part, assembly of parts, or completed unit of any aircraft or space vehicle.

Aerospace component coating facility means a facility that includes one or more aerospace component coating line(s).

Aerospace component coating line means a coating line in which any protective, decorative, or functional

coating or reinforcing material is applied on or impregnated into an aerospace component.

Aircraft means any machine designed to travel through the air above ground without leaving the earth's atmosphere, whether heavier or lighter than air, including airplanes, balloons, dirigibles, helicopters, and missiles.

Automobile means a motor vehicle capable of carrying no more than 12 passengers.

Can means any cylindrical metal, single walled container that is manufactured from metal sheets thinner than 29 gauge (0.0141 in.); with or without a top, cover, spout, or handles; into which solid or liquid materials are packaged.

Can coating facility means a facility that includes one or more can coating line(s).

Can coating line means a coating line in which any protective, decorative, or functional coating is applied onto the surface of cans or can components.

Coating means a material applied onto or impregnated into a substrate for protective, decorative, or functional purposes. Such materials include, but are not limited to, paints, varnishes, sealers, adhesives, thinners, diluents, inks, maskants, and/or temporary protective coatings.

Coating applicator means any equipment or device, including but not limited to cloth, rollers, brushes, spray guns, and dip tanks, used to apply a coating onto or into a substrate.

Coating line means a series of one or more coating applicators and any associated drying areas and/or ovens wherein a single coating is applied, dried, and/or cured. A coating line ends at the end of the drying or curing area or prior to any subsequent coating application. It is not necessary to have an oven or flashoff area in order to be included in this definition. This definition does not include web coating or web printing lines.

Coil means any flat metal sheet or strip that is rolled or wound in concentric rings.

Coil coating facility means a facility that includes one or more coil coating line(s).

Coil coating line means a coating line in which any protective, decorative, or functional coating is applied onto the surface of flat metal sheets, strips, rolls, or coils for industrial or commercial use.

Cold cleaning means the process of cleaning and removing soils from surfaces by spraying, brushing, flushing, or immersion while maintaining the organic solvent below its boiling point. Wipe cleaning is not included in this definition.

Conveyorized degreasing means the continuous process of cleaning and removing soils from surfaces using either cold or vaporized solvents.

Degreaser means any equipment or system used in solvent cleaning.

Degreasing facility means a facility that includes one or more cold cleaning, open-top vapor degreasing, and/or conveyorized degreasing processes.

Dry cleaning facility means a facility engaged in the cleaning of fabrics using an essentially nonaqueous solvent by means of one or more solvent washes, extraction of excess solvent by spinning, and drying by tumbling in an airstream. The facility includes, but is not limited to, washers, dryers, filter and purification systems, waste disposal systems, holding tanks, pumps, and attendant piping and valves.

Fabric coating facility means a facility that includes one or more fabric coating line(s).

Fabric coating line means a coating line in which any protective, decorative, or functional coating or reinforcing material is applied on, saturated into, or impregnated into a textile fabric.

Film coating facility means a facility that includes one or more film coating line(s).

Film coating line means a coating line in which any protective, decorative, or functional coating is applied on, saturated into, or impregnated into any film substrate; other than paper, fabric, or vinyl; including but not limited to typewriter ribbons, photographic film, plastic film, magnetic tape, and metal foil.

Flatwood product means panels made of wood materials including; but not limited to, plywood; particle board, and hardboard.

Flatwood product coating facility means a facility that includes one or more flatwood product coating line(s).

Flatwood product coating line means a coating line in which any protective, decorative, or functional coating is applied on or impregnated into a flatwood product.

Flexographic printing means the application of words, designs, and pictures to a substrate by means of a roll printing technique in which the pattern to be applied is raised above the printing roll and the image carrier is made of elastomeric materials.

Flexographic printing line means a printing line in which each roll printer uses a roll with raised areas for applying an image such as words, designs, or pictures to a substrate. The image carrier on the roll is made of rubber or other elastomeric material.

Fountain solution means the solution which is applied to the image plate to

maintain hydrophilic properties of the nonimage areas.

Graphic arts coating facility means a facility that includes one or more graphic arts coating lines.

Graphic arts coating line means any packaging rotogravure printing, publication rotogravure printing, flexographic printing, lithographic printing, letterpress printing, laminating, or screen printing line or any paper, fabric, or film coating line operated in conjunction with a printing line.

Group I vehicles and equipment means large-sized trucks, buses, and mobile equipment.

Group II vehicles means passenger cars, small-sized trucks and vans, medium-sized trucks and vans, and motorcycles.

Heatset means a class of web-offset lithography which requires a heated dryer to solidify the printing inks.

Heatset-web-offset lithographic printing line means a lithographic printing line in which a blanket cylinder is used to transfer ink from a plate cylinder to a substrate continuously fed from a roll or an extension process and an oven is used to solidify the printing inks.

Heavy off-highway vehicle products means heavy construction, mining, farming, or material handling equipment; heavy industrial engines; diesel-electric locomotives and associated power generation equipment; and the components of such equipment or engines.

Heavy off-highway vehicle products coating facility means a facility that includes one or more heavy off-highway vehicle products coating line(s).

Heavy off-highway vehicle products coating line means a coating line in which any protective, decorative, or functional coating is applied onto the surface of heavy off-highway vehicle products.

Highway means a way or place of whatever nature, publicly maintained and open to the public for purposes of vehicular travel. Highway includes street.

Industrial or commercial solvent use facility means any industrial or commercial facility that uses solvents which contain VOCs or substances that contain solvents which contain VOCs. Industrial and commercial solvent use facilities include, but are not limited to, perchloroethylene dry cleaning, petroleum dry cleaning, metal cleaning, degreasing, aerospace component coating, motor vehicle and mobile equipment assembly line coating, motor vehicle and mobile equipment refinishing, can coating, coil coating,

fabric coating, film coating, flatwood product coating, graphic arts coating, large appliance coating, magnet wire coating, marine vessel coating, metal and wood furniture coating, miscellaneous metal parts and products coating, paper coating, and plastic parts coating facilities. Substances that contain solvents include, but are not limited to, coatings, inks, fountain solutions, adhesives, thinners, and clean-up solvents.

Ink means a coating used in printing, impressing, or transferring an image onto a substrate.

Laminating line means a printing line in which an adhesive is used to form two or more layers of material into a single, multiple-layer sheet.

Large appliance means the component metal parts (including, but not limited to, doors, cases, lids, panels, and interior support parts) of residential and commercial washers, dryers, ranges, refrigerators, freezers, water heaters, dish washers, trash compactors, air conditioners, and other similar products.

Large appliance coating facility means a facility that includes one or more large appliance coating line(s).

Large appliance coating line means a coating line in which any protective, decorative, or functional coating is applied onto the surface of large appliances.

Letterpress printing line means a printing line in which the image area is raised relative to the nonimage area on the roll printer and the ink is transferred to the paper directly from the image surface.

Light-duty truck means any motor vehicle rated at 3,850 kg gross vehicle weight or less, designed mainly to transport property.

Lithographic printing line means a printing line in which the image and nonimage areas are on the same plane of the roll printer.

Magnet wire coating facility means a facility that includes one or more magnet coating line(s).

Magnet wire coating line means a coating line in which electrically insulating varnish or enamel is applied to conducting wire to be used in electrical machinery.

Marine vessel means a ship or boat used to travel on, or a submarine used to travel through, the sea.

Marine vessel coating facility means a facility that includes one or more marine vessel coating line(s).

Marine vessel coating line means a coating line in which any protective, decorative, or functional coating is applied on the fabricated part, assembly of parts, or completed unit of any marine vessel.

Metal furniture means any furniture piece made of metal or any metal part which is or will be assembled with other metal, wood, fabric, plastic, or glass parts to form a furniture piece including, but not limited to, tables, chairs, waste baskets, beds, desks, lockers, benches, shelving, file cabinets, lamps, and room dividers. This definition shall not apply to any coating line coating miscellaneous metal parts or products.

Metal furniture coating facility means a facility that includes one or more metal furniture coating line(s).

Metal furniture coating line means a coating line in which any protective, decorative, or functional coating is applied onto the surface of metal furniture.

Miscellaneous metal part or product means any metal part or metal product, even if attached to or combined with a nonmetal part or product, except cans, coils, metal furniture, large appliances, and magnet wires.

Miscellaneous metal parts or products coating facility means a facility that includes one or more miscellaneous metal parts or products coating line(s).

Miscellaneous metal parts or products coating line means a coating line in which any protective, decorative, or functional coating is applied onto the surface of miscellaneous metal parts or products.

Mobile equipment means self-propelled equipment which is physically capable of being driven on a highway. Mobile equipment includes: automobiles, motorcycles, trucks, vans, construction equipment (e.g., mobile cranes, bulldozers, concrete mixers), farming equipment (e.g., wheel tractors, pesticide sprayers), and miscellaneous equipment (e.g., street cleaners, golf carts, and hauling equipment used inside and around airports, docks, depots, and industrial and commercial plants).

Motorcycle means any motor vehicle other than a tractor having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground and weighing less than 1,500 lbs, except that four wheels may be in contact with the ground when two of the wheels are a functional part of a sidecar.

Motor vehicle or mobile equipment assembly line coating facility means a facility where parts are manufactured or finished for eventual inclusion into finished motor vehicles or mobile equipment ready for sale to motor vehicle or mobile equipment dealers. This definition does not include customizers, body shops, and/or other auto refinishing facilities.

Motor vehicle or mobile equipment refinishing facility means a facility where all or any part of used motor vehicles or mobile equipment is refinished, or customized, by the application of paint. This definition includes motor vehicles or mobile equipment dealerships who purchase new motor vehicle or mobile equipment from Original Equipment Manufacturers. This definition does not include motor vehicle or mobile equipment assembly line coating facilities.

Motor vehicle means a vehicle which is self-propelled and physically capable of being driven on a highway.

Offset means a blanket cylinder that is used to transfer ink from a plate cylinder to the substance to be printed.

Open-top vapor degreasing means the batch process of cleaning and removing soils from surfaces by condensing hot solvent vapor on the colder metal parts.

Oven means a chamber within which heat is used for one or more of the following purposes: to dry, bake, cure, or polymerize a coating or ink.

Packaging rotogravure printing means rotogravure printing upon paper, paper board, metal foil, plastic film, and other substrates which are, in subsequent operations, formed into packaging products or labels for articles to be sold.

Packaging rotogravure printing line means a rotogravure printing line in which surface coatings are applied to paper, paperboard, foil, film, or other substrates which are to be used to produce containers, packaging products, or labels for articles.

Paper coating facility means a facility that includes one or more paper coating line(s).

Paper coating line means a coating line in which any protective, decorative, or functional coating is applied on, saturated into, or impregnated into paper, plastic film, or metallic foil to manufacture, including but not limited to, adhesive tapes and labels, book covers, post cards, office copier paper, drafting paper, and pressure sensitive tapes.

Printing line means an operation consisting of a series of one or more roll printers and any associated roll coaters, drying areas, and/or ovens wherein one or more surface coatings are applied, dried, and/or cured. It is not necessary for an operation to have an oven, or flashoff area, or drying area to be included in this definition.

Publication rotogravure printing line means a rotogravure printing line in which surface coatings are applied to paper which is subsequently formed into books, magazines, catalogues, brochures, directories, newspaper

supplements, or other types of printed material.

Refinish means to restore or replace coatings on Group I vehicles (large-sized trucks, buses, and mobile equipment) and Group II vehicles (passenger cars, small-sized trucks and vans, medium-sized trucks and vans, and motorcycles) and equipment, or their parts and components, except Original Equipment Manufacturer coatings applied at motor vehicle or mobile equipment assembly line coating facilities.

Roll coater means an apparatus in which a uniform layer of coating material is applied by means of a roll or rolls across the entire width of a moving substrate which is fed from an unwinding roll.

Roll printer means an apparatus in which a surface coating is applied by means of a roll or rolls with only partial coverage across the width of a moving substrate which is fed from an unwinding roll. The partial coverage results in the formation of words, designs, or pictures on the substrate.

Rotogravure printing means the application of words, designs, and pictures to a substrate by means of a roll printing technique in which the pattern to be applied is recessed relative to the nonimage area.

Rotogravure printing line means a printing line in which each roll printer uses a roll with recessed areas for applying an image to a substrate.

Screen printing line means a printing line in which the printing ink passes through a web or a fabric to which a refined form of stencil has been applied. The stencil openings determine the form and dimensions of the imprint.

Solvent means a liquid substance that is used to dissolve or dilute another substance.

Solvent cleaning means the process of cleaning soils from surfaces by cold cleaning, open-top vapor degreasing, or conveyorized degreasing.

Space vehicle means any vehicle designed to travel beyond the earth's atmosphere.

Street means a public road in a town or city.

Substrate means the surface to which a coating is applied on, saturated into, or impregnated into.

Vinyl coating facility means a facility that includes one or more vinyl coating line(s).

Vinyl coating line means a coating line in which any protective, decorative, or functional coating or printing ink is applied on to vinyl-coated fabric or vinyl sheets.

Web means an automatic system which supplies substrate from a continuous roll or an extrusion process.

Wood furniture means room furnishings including cabinets (kitchen, bath, and vanity), tables, chairs, beds, sofas, shutters, art objects, wood paneling, wood flooring, and any other coated furnishings made of wood, wood composition, or fabricated wood materials.

Wood furniture coating facility means a facility that includes one or more wood furniture coating line(s).

Wood furniture coating line means a coating line in which any protective, decorative, or functional coating is applied onto wood furniture.

(ii) **Applicability.** (A) The requirements of paragraphs (b)(1)(iii) (A) and (B), (b)(1)(iv)(A), (b)(1)(v)(A), and (b)(1)(vi)(A) of this section shall apply to any owner or operator of any degreasing facility or any motor vehicle or mobile equipment refinishing facility located in the South Coast Air Basin and in coastal waters within three miles of Los Angeles or Orange County in California.

(B) The requirements of paragraphs (b)(1)(iii) (A) and (B), (b)(1)(iv)(A), (b)(1)(v)(A), and (b)(1)(vi)(A) of this section shall apply to any owner or operator of an industrial or commercial solvent use facility located in the applicable area specified in paragraph (b)(1)(ii)(A) of this section at which total VOC emissions are greater than or equal to 9.1 kg (20 lbs) during any one day.

(C) The requirements of paragraphs (b)(1)(iv)(B), (b)(1)(B), and (b)(1)(vi)(B) of this section shall apply to any owner or operator of an industrial or commercial solvent use facility located in the applicable area specified in paragraph (b)(1)(ii)(A) of this section at which total VOC emissions from all emissions sources are always less than 9.1 kg (20 lbs) during any one day. If total VOC emissions from a facility which is exempt from the limitations of paragraph (b)(1)(iii)(B) of this section ever exceed 9.1 kg (20 lbs) during any one day on or after January 1, 1995, the facility will lose its exempt status, and the owner or operator shall comply with the requirements of paragraphs (b)(1)(iii)(B), (b)(1)(iv)(A), (b)(1)(v)(A), and (b)(1)(vi)(A) of this section beginning January 1 of the calendar year following the date of the exceedance.

(iii) **Specific provisions.** (A) Each owner or operator of a subject industrial or commercial solvent use facility shall submit a VOC emissions reduction compliance plan to the Administrator by January 1, 1993. The plan shall be prepared for the years 1996 through 2000 and shall include all of the information specified in paragraphs (b)(1)(iii)(A) (1) through (5) of this section. Subsequent plans may be required at a later date for the two five-year intervals from 2001

through 2010. Each owner or operator shall submit a revised plan to the Administrator within 30 calendar days of receipt of comments from the Administrator. Each owner or operator shall comply at all times with the provisions of the most recent plan submitted to the Administrator.

(1) The name, title, address, and telephone number of the owner or operator of the facility, and of each person responsible for preparing the information required under paragraph (b)(1)(iii)(A)(2) of this section.

(2) Baseline VOC emissions shall be calculated for each facility. Baseline emissions for each facility shall equal the sum of VOC emissions from all emissions sources at the facility including emissions associated with the use of architectural coatings and clean up solvents. Emissions associated with consumer products should not be included in the baseline. Baseline emissions shall be based on the lower of the actual or allowable emissions rate and the actual production, throughput, or usage level for each emissions source. Baseline emissions shall be calculated for each emissions source in accordance with one of the procedures specified in paragraph (b)(1)(iii)(A)(2) (i) or (ii) of this section.

(i) If daily emissions records are available for the calendar years 1986 and 1987, baseline emissions shall be based on the median value of daily emissions recorded for the two-year period.

(ii) If daily emissions records are not available for the calendar years 1986 and 1987, baseline emissions shall be based on the average daily emissions value calculated for the two-year period. The average daily emissions value shall be calculated by dividing emissions for the two-year period by the operating or usage time for the two-year period. If solvent or coating usage data are not available, emissions associated with solvent or coating usage may be estimated from purchase-order records. The operating or usage time for the two-year period shall be based on one of the criteria specified in paragraphs (b)(1)(iii)(A)(2)(i) (A), (B), or (C) of this section.

(A) The number of days specified in a federally enforceable permit if the emissions source operated under the conditions of a federally enforceable permit which restricted operating times during the two-year period.

(B) The average number of days that the emissions source was operated or used over the two-year period if documentation is available to support the number, or

(C) 730 days if documentation of the number of days that the emissions source was operated or used over the two-year period is not available.

(3) Methods to be employed by the owner or operator to limit VOC emissions from emissions sources to within the emissions level required in paragraph (b)(1)(iii)(B) of this section. Methods may include but are not limited to:

(i) Installation of capture systems and control devices,

(ii) Modifications to increase the efficiency of existing capture systems and/or control devices,

(iii) Process modifications and/or substitutions, and

(iv) Reduction in operating schedules for one or more emissions sources at the facility.

(4) Test or demonstration methods used to demonstrate achievement of the VOC emissions reductions required in paragraph (b)(1)(iii)(B) of this section. The methods may include but are not limited to:

(i) The test methods and procedures specified in paragraph (a)(4) of this section,

(ii) Data and engineering calculations documenting process modifications that were made to reduce VOC emissions, and

(iii) Operating schedules for baseline emissions levels and for emissions levels starting January 1, 1996, continuing for a period not less than 15 years, for those facilities choosing to comply through use of reduced operating schedules.

(5) Projections of annual VOC emissions for each emissions source through the year 2010 after application of the reduction methods described in paragraph (b)(1)(iii)(A)(3) of this section.

(B) Beginning January 1, 1996, each owner or operator of a facility which is subject to the limitations of this paragraph, as described under paragraph (b)(1)(ii)(A) or (ii)(B) of this section, shall limit total VOC emissions from the subject facility to the level calculated by the following equation:

$$R_N \leq \sum_{i=1}^n R_{oi} - \sum_{i=1}^n R_{oi} [(N-1995) (0.06)]$$

where

R_N = Allowable VOC emissions during calendar year "N" for all emissions sources at the facility in units of kg (lbs) per day,

R_{oi} = Baseline VOC emissions in units of kg (lbs) per day for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(1)(iii)(A)(2) of this section.

N = Current calendar year. N will remain equal to 2010 subsequent to the calendar year 2010,

i = Subscript denoting a specific emissions source, and

n = Total number of emissions sources at the facility.

(iv) *Reporting.* (A) Each owner or operator of a facility which is subject to the limitations of paragraph (b)(1)(iii)(B) of this section, as described under paragraph (b)(1)(ii)(A) or (ii)(B) of this section, shall submit to the Administrator by March 1 of each calendar year, beginning in 1997, a certification of compliance with this rule for the previous calendar year. This certification shall include:

(1) A declaration that the facility is in compliance with all of the requirements of this rule, and

(2) Documentation of methods used to achieve the VOC emissions reductions required in paragraph (b)(1)(iii)(B) of this section. The documentation must be presented in a format equivalent to Table 1 of this rule.

(B) Each owner or operator of a facility which is exempt from the limitations of paragraph (b)(1)(iii)(B) of this section because of paragraph (b)(1)(ii)(C) of this section shall comply with the following:

(1) By January 1, 1995, the owner or operator shall certify to the Administrator that the facility is exempt from the limitations of paragraph (b)(1)(iii)(B) of this section. This certification shall include:

(i) A declaration that the facility is exempt from the limitations of paragraph (b)(1)(iii)(B) of this section because of paragraph (b)(1)(ii)(C) of this section, and

(ii) Calculations which demonstrate that total baseline VOC emissions from all emissions sources at the facility are and will remain less than 9.1 kg (20 lbs) during any one day. Baseline emissions shall be calculated in accordance with the procedures specified in paragraphs (b)(1)(iii)(A)(2) (i) and (ii) of this section.

(2) On and after January 1, 1995, the owner or operator shall notify the

Administrator of any record showing that total VOC emissions from the facility exceeded 9.1 kg (20 lbs) during any one day by sending a copy of such record to the Administrator within 30 calendar days after the exceedance occurs.

(v) *Recordkeeping.* (A) Each owner or operator of a facility which is subject to the limitations of paragraph (b)(1)(iii)(B) of this section, as described under paragraph (b)(1)(ii)(A) or (ii)(B) of this section, shall collect and record all information necessary to demonstrate compliance with the limitations of paragraph (b)(1)(iii)(B) of this section for each emissions source and maintain the information at the facility for a period of three years. The information shall be collected and recorded each day of each calendar year beginning in 1996 and ending with 2010.

(B) Each owner or operator of a facility which is exempt from the limitations of paragraph (b)(1)(iii)(B) of this section, as described under paragraph (b)(1)(ii)(C) of this section shall collect and record all information necessary to demonstrate that total VOC emissions from all emissions sources are less than 9.1 kg (20 lbs) during each day and maintain the information at the facility for a period of three years. The information shall be collected and recorded each day of each calendar year beginning in 1996 and ending with 2010.

(vi) *Testing and monitoring.* (A) The Administrator may require, at any time, any owner or operator of a facility subject to the limitations of paragraph (b)(1)(iii)(B) of this section because of paragraph (b)(1)(ii)(A) or (B) of this section to perform tests using the applicable test methods and procedures specified in paragraph (a)(4) of this section and/or to install monitoring equipment specified in paragraph (a)(4)(iv)(B) of this section to demonstrate compliance with the limitations of paragraph (b)(1)(iii)(B).

(B) The Administrator may require, at any time, any owner or operator of a facility which is exempt from the limitations of paragraph (b)(1)(iii)(B) of this section because of paragraph (b)(1)(ii)(C) of this section to perform tests using the applicable test methods and procedures specified in paragraph (a)(4) to demonstrate that the facility is exempt from the limitations of paragraph (b)(1)(iii)(B) of this section.

TABLE 1.—VOLATILE ORGANIC COMPOUND (VOC) EMISSIONS REDUCTION PLAN

Year	Emissions source emissions	Total allowable emissions	Total actual emissions reduction	Annual percent reduction	Total percent reduction	Reduction method	Test or demonstration method
N	r_A, r_B, \dots, r_Z	R	R_A	r_A, r_B, \dots, r_Z	r_A, r_B, \dots, r_Z	r_A, r_B, \dots, r_Z	r_A, r_B, \dots, r_Z
1		R_1	R_{A1}	$(R_0 - R_1)/R_{OK}$	$(R_0 - R_1)/R_0$		
2		R_2	R_{A2}	$(R_1 - R_2)/R_1$	$(R_1 - R_2)/R_1$		
N		R_N	R_{AN}	$(R_N - 1 - R_N)/R_N - 1$	$(R_0 - R_0)/R_N$		

Where: N=Calendar year 1987 through 2010
 r_A, r_B, \dots, r_Z = Annual VOC emissions for each emissions source at the facility in units of Mg (tons) per year

R = Total allowable VOC emissions for all emissions sources at the facility during calendar year "N" in units of Mg (tons) per year

R_A = Total actual VOC emissions for all emissions sources at the facility during calendar year "N" in units of Mg (tons) per year

R_0 = Total baseline VOC emissions for all emissions sources at the facility in units of Mg (tons) per year

(2) *Industrial and Commercial Solvents/Coatings (Format #3 Alternative)*—(i) *Definitions*—(A) For purpose of this regulation, the general definitions in paragraph (a)(3) of this section apply.

(B) For the purpose of this rule, the following definitions also apply:

Baseline mass means the yearly total mass of VOC in solvents or coatings and applies to the registered distributor's total inventory VOC. This quantity is calculated as the maximum yearly total mass of VOC in solvent or coating distributed in the two calendar years prior to promulgation.

Commercial user means corporation, companies, association, societies, firms, partnerships and joint stock companies that are not registered distributors, but purchase solvent and/or coating(s) for industrial or commercial use.

Consortium means a partnership, an agreement between, or an association of two or more registered distributors.

Industrial Solvent means a liquid substance used in industrial, commercial or institutional processes to dissolve or dilute another substance.

Industrial/commercial coating means a material applied on or impregnated into a substrate for protective, decorative or functional purposes. Such materials include but are not limited to, paint, varnishes, sealers, adhesives, and inks.

Registered Distributor means any person who initially sells or offers for sale any industrial solvent or industrial/commercial coating to any person in the South Coast area.

Residential user means an individual who purchases solvent for personal use.

(ii) *Applicability*. (A) The requirements of paragraph (b)(2)(iii) of this section shall apply to each distributor or consortium who will repack, sell, or use industrial solvents or industrial/commercial coatings in the South Coast Air Basin and coastal waters within three miles of Orange and Los Angeles Counties.

(B) The requirements of paragraph (b)(2)(iii)(B) of this Section shall apply to all commercial users who will repack, sell, or use industrial solvents or industrial/commercial coatings in the South Coast Air Basin and coastal waters within three miles of Orange and Los Angeles Counties.

(C) The provisions of paragraph (b)(2)(iii) of this Section shall not apply to industrial solvents or industrial/commercial coatings, including applicable solvents and coatings shipped outside the area for repackaging, which are manufactured for sale or use outside the South Coast Air Basin and coastal waters within three miles of Orange and Los Angeles Counties. The provisions of paragraph (b)(2)(iii) of this Section shall apply to all industrial solvents and industrial/commercial coatings shipped to manufacturers or users within the applicable area.

(iii) *Specific provisions*—(A) Any distributor or consortium who intends to distribute industrial solvent or industrial/commercial coatings in the South Coast Air Basin must register with the U.S. Environmental Protection Agency (USEPA) as a registered distributor. To register, each distributor or consortium must file an application with the USEPA. The application must contain the name of the distributor (e.g. company name), the company address and telephone number, the distributors total baseline VOC mass, and the corresponding allowable total VOC mass as given in (b)(2)(iii)(D) of this Section for the years 1996 through 2010.

(B) Any commercial user who intends to purchase industrial solvents or industrial/commercial coating shall purchase these solvents and/or coatings from a registered distributor or from a supply originally brought into the South Coast area from a registered distributor. Documentation indicating this shall be

made available to a representative of the USEPA upon request and shall be kept on file for a period of three years from the date of purchase.

(C) Any source subject to these provisions shall be subject to spot checks by a representative of the USEPA. Documentation kept on file at the source location must be sufficient to ascertain whether the source is in compliance with these provisions. Failure to keep necessary documentation shall result in a notice of violation.

(D) No distributor or consortium subject to the provisions of this regulation shall supply, offer for sale, solicit the use of, or manufacture or distribute for sale, any product to which this regulation applies in excess of the limits specified below. The limits given below indicate the total mass of VOC a distributor is allowed to sell or distribute within the area described under (b)(1)(ii)(A) of this Section as a percentage of the distributor's total baseline mass for each year for the years 1996 to 2010. No further reductions after the year 2010 shall be required. If any distributor reduces the allowable percentage by more than the required amount in any year, that person may claim the difference as credit in the following year(s). Beginning January 1, 1986, each registered distributor or consortium shall limit the total mass of VOC distributed within the area described under (b)(1)(ii)(A) of this Section according to the following formula:

$$S_n < = S_0 - (N - 1995)(6)$$

where:

S_n = Allowable percentage of total baseline VOC mass which can be distributed in industrial solvents, or industrial and commercial coatings in year "N".

S_0 = Total baseline mass of allowable VOC which can be distributed, calculated from a yearly average of the mass of VOC distributed from each person in calendar years 1987 and 1988. In percentage terms, S_0 equals 100 percent, which is the value to be used in the above equation.

N = Current calendar year. N will remain equal to 2010 subsequent to 2010.

The allowable total VOC mass for each distributor as percentage of the

total baseline mass that can be distributed for all applicable years is given in tabular form below.

Year	Allowable percentage for sale or distributorship
1995	100
1996	94
1997	88
1998	76
2000	70
2001	64
2002	58
2003	52
2004	46
2005	40
2006	34
2007	28
2008	22
2009	16
2010	10

(iv) *Compliance schedule.* (A) Compliance with the limitations given in paragraph (b)(2)(iii)(D) of this section shall be required by the dates indicated in paragraph (b)(2)(iii) of this section. Any person wishing to be registered as a distributor or consortium must file the necessary documentation as given in paragraph (b)(2)(iii) of this section with the USEPA by January 1, 1993.

(v) *Recordkeeping.* (A) Any distributor of industrial solvents and/or industrial/commercial coating or consortium in the South Coast Air Basin must maintain all information necessary for a determination of compliance with this regulation at the facility for a period of three years from when the solvent and/or coating was distributed. The information must include the product formulation and associated physical/chemical data including volume and density of solvents used in the products and total volume and weight of the product. Failure to keep necessary and accurate documentation is a violation.

(B) Any commercial user shall keep on file documentation indicating any industrial solvent or industrial/commercial coating was purchased from a registered distributor for a period of three years from date of purchase. If the industrial solvent or industrial/commercial coating has been purchased from another commercial user (i.e., not a registered distributor), documentation showing the name of the person, date, and amount purchased shall be kept on file for a period of three years from date of purchase. Failure to keep necessary and accurate documentation is a violation.

(C) Residential users are exempt from the requirements contained in (b)(2)(iii), (v)(A), and (v)(B) of this section.

(vi) Failure to comply with any provision of this rule is a violation of the

applicable implementation plan for purposes of section 113 of the Clean Air Act.

(3) *VOC Emissions Associated with the Manufacturing of Products—(i) Definitions.* (A) For the purpose of this rule, the general definitions in paragraph (a)(3) of this section apply.

(B) For the purpose of this rule, the following definitions also apply: "Facility which manufactures products containing VOCs" means any facility where VOCs are emitted from processes which are used to manufacture or fabricate products. These products include, but are not limited to, the products specified in subparagraphs (1) through (7) of this definition. This definition does not include facilities which are subject to any of the requirements of the industrial and commercial solvent use rule; the petroleum and natural gas extraction, processing, storage, distribution, and marketing rule; or the food preparation rule.

(1) Industrial and agricultural organic chemicals and gases. Industrial organic chemicals include, but are not limited to, gum and wood chemicals, cyclic organic crudes and intermediates, organic dyes and pigments, and the chemicals shown in Table 1 of the Technical Support Document. Agricultural organic chemicals include, but are not limited to, pesticides, livestock dips, soil conditioners, and fertilizers.

(2) Plastic materials, synthetic resins, synthetic rubber, elastomers, and cellulosic and manmade fibers.

(3) Drugs which include, but are not limited to, medicinal chemicals and botanical products, pharmaceutical preparations, in vitro and in vivo diagnostic substances, and biological products.

(4) Soaps; detergents; cleaning, polishing, and sanitizing preparations; surface active agents, finishing agents, sulfonated oils, and assistants; and perfumes and cosmetics.

(5) Food additives and sweeteners.

(6) Paints, varnishes, lacquers, enamels, inks, primers, paint removers, thinners, stains, shellacs, cleaners, putty, coatings, adhesives, fillers, sealants, explosives, and carbon black.

(7) Fabricated rubber and miscellaneous plastics products including, but not limited to, tires and inner tubes; rubber and plastics footwear, hose, belting, gasket, packing, and sealing devices; and molded, extruded, and lathe-cut mechanical rubber goods.

Manufacture means to produce or combine any ingredients contained in any product.

Manufacturing process means a process or a series of processes used to convert raw materials, feed stocks, subassemblies, or other components into a product which will be sold, offered for sale, supplied, or distributed or will be used as a component in a subsequent manufacturing process. This definition includes the storage and handling of organic compounds or gases which are used in a manufacturing process and the handling of organic compounds or gases used to clean-up a manufacturing process.

(ii) *Applicability.* (A) The requirements of paragraphs (b)(3)(iii)(A), (b)(3)(iii)(B), (b)(3)(iv)(A), (b)(3)(v)(A), and (b)(3)(vi)(A) of this section shall apply to any owner or operator of a facility which manufactures products containing VOCs located in the South Coast Air Basin and coastal waters within three miles of Orange and Los Angeles Counties at which total VOC emissions are greater than or equal to 4.5 kg (10 lbs) during any one day.

(B) The requirements of paragraphs (b)(3)(iv)(B), (b)(3)(v)(B), and (b)(3)(vi)(B), of this section shall apply to any owner or operator of a facility which manufactures products containing VOCs located in the applicable area specified in paragraph (b)(3)(ii)(A) of this section at which total VOC emissions from all emissions sources are always less than 4.5 kg (10 lbs) during any one day. If uncontrolled VOC emissions from a facility which is exempt from the limitations of paragraph (b)(3)(iii)(B) of this section ever exceed 4.5 kg (10 lbs) during any one day on or after January 1, 1995, the facility will lose its exempt status, and the owner or operator shall comply with the requirements of paragraphs (b)(3)(iii)(B), (b)(3)(iv)(A), (b)(3)(v)(A), and (b)(3)(vi)(A) of this section beginning January 1 of the calendar year following the date of the exceedance.

(iii) *Specific provisions.* (A) Each owner or operator of a subject facility which manufactures products containing VOCs shall submit a VOC emissions reduction compliance plan to the Administrator by January 1, 1993. The plan shall be prepared for the years 1996 through 2000 and shall include all of the information specified in paragraphs (b)(3)(iii)(A) (1) through (5) of this section. Subsequent plans may be required at a later date for the two five-year intervals from 2001 through 2010. Each owner or operator shall submit a revised plan to the Administrator within 30 calendar days of receipt of comments from the Administrator. Each owner or operator shall comply at all times with

the provisions of the most recent plan submitted to the Administrator.

(1) The name, title, address, and telephone number of the owner or operator of the facility, and of each person responsible for preparing the information required under paragraph (b)(3)(iii)(A)(2) of this section.

(2) Baseline VOC emissions shall be calculated for each facility. Baseline emissions for each facility shall equal the sum of VOC emissions from all emissions sources at the facility including emissions associated with the use of architectural coatings and clean-up solvents. Baseline emissions shall be based on the lower of the actual or allowable emissions rate and the actual production, throughput, or usage level for each emissions source. Baseline emissions shall be calculated for each emissions source in accordance with one of the procedures specified in paragraph (b)(3)(iii)(A)(2) (i) or (ii) of this section.

(i) If daily emissions records are available for the calendar years 1986 and 1987, baseline emissions shall be based on the median value of daily emissions recorded for the two-year period.

(ii) If daily emissions records are not available for the calendar years 1986 and 1987, baseline emissions shall be based on the average daily emissions value calculated for the two-year period. The average daily emissions value shall be calculated by dividing emissions for the two-year period by the operating or usage time for the two-year period. If solvent usage data are not available, emissions associated with solvent usage may be estimated from purchase-order records. The operating or usage time for the two-year period shall be based on one of the criteria specified in paragraphs (b)(3)(iii)(A)(2)(i) (A), (B), or (C) of this section.

(A) The number of days specified in a federally enforceable permit if the emissions source operated under the conditions of a federally enforceable permit which restricted operating times during the two-year period.

(B) The average number of days that the emissions source was operated or used over the two-year period if documentation is available to support the number, or

(C) 730 days if documentation of the number of days that the emissions source was operated or used over the two-year period is not available.

(3) Methods to be employed by the owner or operator to limit VOC emissions from emissions sources to within the emissions level required in paragraph (b)(3)(iii)(B) of this section.

Methods may include but are not limited to:

(i) Installation of capture systems and control devices.

(ii) Modifications to increase the efficiency of existing capture systems and/or control devices.

(iii) Process modifications and/or substitutions, and

(iv) Reduction in operating schedules for one or more emissions sources at the facility.

(4) Test or demonstration methods used to demonstrate achievement of the VOC emissions reductions required in paragraph (b)(3)(iii)(B) of this section. The methods may include but are not limited to:

(i) The test methods and procedures specified in paragraph (a)(4) of this section.

(ii) Data and engineering calculations documenting process modifications that were made to reduce VOC emissions, and

(iii) Operating schedules for baseline emissions levels and for emissions levels starting January 1, 1996, continuing for a period not less than 15 years, for those facilities choosing to comply through use of reduced operating schedules.

(5) Projections of annual VOC emissions for each emissions source through the year 2010 after application of the reduction methods described in paragraph (b)(3)(iii)(A)(3) of this section.

(B) Beginning January 1, 1996, each owner or operator of a facility which is subject to the limitations of this paragraph, as described under paragraph (b)(3)(ii)(A) of this section, shall limit total VOC emissions from the subject facility to the level calculated by the following equation:

$$R_n < \sum_{i=1}^n R_{oi} - \sum_{i=1}^n R_{oi} [(N-1995) (0.06)]$$

where

R_N = Allowable VOC emissions during calendar year "N" for all emissions sources at the facility in units of kg (lbs) per day.

R_{oi} = Baseline VOC emissions in units of kg (lbs) per day for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(3)(iii)(A)(2) of this section.

N = Current calendar year. N will remain equal to 2010 subsequent to the calendar year 2010.

i = Subscript denoting a specific emissions source, and

n = Total number of emissions sources at the facility.

(iv) Reporting. (A) Each owner or operator of a facility which is subject to the limitations of paragraph (b)(3)(iii)(B) of this section, as described under paragraph (b)(3)(ii)(A) of this section, shall submit to the Administrator by March 1 of each calendar year, beginning in 1997, a certification of compliance with this rule for the previous calendar year. This certification shall include:

(1) A declaration that the facility is in compliance with all of the requirements of this rule, and

(2) Documentation of methods used to achieve the VOC emissions reductions required in paragraph (b)(3)(iii)(B) of this section. The documentation must be presented in a format equivalent to Table 1 [see to (b)(1) Table 1].

(B) Each owner or operator of a facility which is exempt from the limitations of paragraph (b)(3)(iii)(B) of this section, as described under paragraph (b)(3)(ii)(B) of this section, shall comply with the following:

(1) By January 1, 1995, the owner or operator shall certify to the Administrator that the facility is exempt from the limitations of paragraph (b)(3)(iii)(B) of this section. This certification shall include:

(i) A declaration that the facility is exempt from the limitations of paragraph (b)(3)(iii)(B) of this section, as described under paragraph (b)(3)(ii)(B) of this section, and

(ii) Calculations which demonstrate that total baseline VOC emissions from all emissions sources at the facility are and will remain less than 4.5 kg (10 lbs) during any one day. Baseline emissions shall be calculated in accordance with the procedures specified in paragraph (b)(3)(iii)(A)(2) (i) and (ii) of this section.

(2) On and after January 1, 1995, the owner or operator shall notify the Administrator of any record showing that total VOC emissions from the facility exceeded 4.5 kg (10 lbs) during any one day by sending a copy of such record to the Administrator within 30 calendar days after the exceedance occurs.

(v) Recordkeeping. (A) Each owner or operator of a facility which is subject to the limitations of paragraph (b)(3)(iii)(B) of this section, as described under paragraph (b)(3)(ii)(A) of this section, shall collect and record all information necessary to demonstrate compliance with the limitations of paragraph (b)(3)(iii)(B) of this section, for each emissions source and maintain the information at the facility for a period of three years. The information shall be

collected and recorded each day of each calendar year beginning in 1996 and ending with 2010.

(B) Each owner or operator of a facility which is exempt from the limitations of paragraph (b)(3)(iii)(B) of this section, as described under paragraph (b)(3)(ii)(B) of this section, shall collect and record all information necessary to demonstrate the total VOC emissions from all emissions sources are less than 4.5 kg (10 lbs) during each day and maintain the information at the facility for a period of three years. The information shall be collected and recorded each day of each calendar year beginning in 1996 and ending with 2010.

(vi) *Testing and Monitoring.* (A) The Administrator may require, at any time, any owner or operator of a facility subject to the limitations of paragraph (b)(3)(iii)(B) of this section, as described under paragraph (b)(3)(ii)(A) of this section, to perform tests using the applicable test methods and procedures specified in paragraph (a)(4) of this section and/or to install monitoring equipment specified in paragraph (a)(4)(iv)(B) of this section to demonstrate compliance with the limitations of paragraph (b)(3)(iii)(B) of this section.

(B) The Administrator may require, at any time, any owner or operator of a facility which is exempt from the limitations of paragraph (b)(3)(iii)(B) of this section because of paragraph (b)(3)(ii)(B) of this section to perform tests using the applicable test methods and procedures specified in section (a)(4) of this section to demonstrate that the facility is exempt from the limitations of paragraph (b)(3)(iii)(B) of this section.

(4) *Disposal of Materials Containing Volatile Organic Compounds—(i) Definitions.* (A) For the purpose of this rule, the general definitions in paragraph (a)(3) of this section apply.

(B) For the purpose of this rule, the following definitions also apply:

Biodegradable waste disposal facility means any facility which is operated as a business or owned by a state or municipality and is used to treat, store, or dispose of biodegradable waste or to reclaim or recycle organic compounds or gases from biodegradable wastes.

Biodegradable waste means any organic waste that can be broken down into its basic elements by microorganisms.

Organic waste disposal facility means any facility which is operated as a business or owned by a state or municipality and is used to treat, store, or dispose of organic wastes that contain VOCs or to reclaim or recycle organic compounds or gases from

organic wastes that contain VOCs. Such facilities include, but are not limited to, biodegradable waste disposal facilities (e.g., landfills); publicly owned treatment works; hazardous waste treatment, storage, and disposal facilities; and sewage sludge, solid waste, and hazardous waste incinerators.

Publicly owned treatment work (POTW) means any device or system which is owned by a state or municipality and is used to treat (including recycling and reclamation) municipal sewage or industrial liquid waste.

(ii) *Applicability.* The requirements of paragraphs (b)(4) (iii), (iv), (v), and (vi) of this section shall apply to any owner or operator of any organic waste disposal facility located in the South Coast Air Basin and coastal waters within three miles of Orange and Los Angeles Counties.

(iii) *Specific Provisions.* (A) Each owner or operator of an organic waste disposal facility shall submit a VOC emissions reduction compliance plan to the Administrator by January 1, 1993. The plan shall be prepared for the years 1996 through 2000 and shall include all of the information specified in paragraphs (b)(4)(iii)(A) (1) through (5) of this section. Subsequent plans may be required at a later date for the two five-year intervals from 2001 through 2010. Each owner or operator shall submit a revised plan to the Administrator within 30 calendar days of receipt of comments from the Administrator. Each owner or operator shall comply at all times with the provisions of the most recent plan submitted to the Administrator.

(1) The name, title, address, and telephone number of the owner or operator of the facility, and of each person responsible for preparing the information required under paragraph (b)(4)(iii)(A)(2) of this section.

(2) Baseline VOC emissions shall be calculated for each facility. Baseline emissions for each facility shall equal the sum of VOC emissions from all emissions sources at the facility including emissions associated with the use of architectural coatings and clean-up solvents. Baseline emissions shall be based on the lower of the actual or allowable emissions rate and the actual production, throughput, or usage level for each emissions source. Baseline emissions shall be calculated for each emissions source in accordance with one of the procedures specified in paragraph (b)(4)(iii)(A)(2) (i) or (ii) of this section.

(i) If daily emissions records are available for the calendar years 1986 and 1987, baseline emissions shall be

based on the median value of daily emissions recorded for the two-year period.

(ii) If daily emissions records are not available for the calendar years 1986 and 1987, baseline emissions shall be based on the average daily emissions value calculated for the two-year period. The average daily emissions value shall be calculated by dividing emissions for the two-year period by the operating time for the two-year period. The operating time for the two-year period shall be based on one of the criteria specified in paragraph (b)(4)(iii)(A)(2)(i) (A), (B), or (C) of this section.

(A) The number of days specified in a federally enforceable permit if the emissions source operated under the conditions of a federally enforceable permit which restricted operating times during the two-year period.

(B) The average number of days that the emissions source was operated over the two-year period if documentation is available to support the number, or

(C) 730 days if documentation of the number of days that the emissions source was operated over the two-year period is not available.

(3) Methods to be employed by the owner or operator to limit VOC emissions from emissions sources to within the emissions level required in paragraph (b)(4)(iii)(B) of this section. Methods may include but are not limited to:

(i) Installation of capture systems and control devices.

(ii) Modifications to increase the efficiency of existing capture systems and/or control devices.

(iii) Process modifications and/or substitutions, and

(iv) Reduction in operating schedules for one or more emissions sources at the facility.

(4) Test or demonstration methods used to demonstrate achievement of the VOC emissions reductions required in paragraph (b)(4)(iii)(B) of this section. The methods may include but are not limited to:

(i) The test methods and procedures specified in paragraph (a)(4) of this section.

(ii) Data and engineering calculations documenting process modifications that were made to reduce VOC emissions, and

(iii) Operating schedules for baseline emissions levels and for emissions levels starting January 1, 1996, continuing for a period not less than 15 years, for those facilities choosing to comply through use of reduced operating schedules.

(5) Projections of annual VOC emissions for each emissions source through the year 2010 after application of the reduction methods described in paragraph (b)(4)(iii)(A)(3) of this section.

(B) Beginning January 1, 1996, each owner or operator of a facility which is subject to the limitations of this paragraph because of paragraph (b)(4)(ii) of this section shall limit total VOC emissions from the subject facility to the level calculated by the following equation:

$$R_n < \sum_{i=1}^n R_{oi} - \sum_{i=1}^n R_{oi} [(N-1995) (0.06)]$$

where

R_n = Allowable VOC emissions during calendar year "N" for all emissions sources at the facility in units of kg (lbs) per day.

R_{oi} = Baseline VOC emissions in units of kg (lbs) per day for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(4)(iii)(A)(2) of this section.

N = Current calendar year. N will remain equal to 2010 subsequent to the calendar year 2010.

i = Subscript denoting a specific emissions source, and

n = Total number of emissions sources at the facility.

(iv) *Reporting.* Each owner or operator of a facility which is subject to the limitations of paragraph (b)(4)(iii)(B) of this section, as described under paragraph (b)(4)(ii) of this section shall submit to the Administrator by March 1 of each calendar year, beginning in 1997, a certification of compliance with this rule for the previous calendar year. This certification shall include:

(A) A declaration that the facility is in compliance with all of the requirements of this rule, and

(B) Documentation of methods used to achieve the VOC emissions reductions required in paragraph (b)(4)(iii)(B) of this section. The documentation must be presented in a format equivalent to Table 1 [see § 52.264 (b)(1) Table 1].

(v) *Recordkeeping.* Each owner or operator of a facility which is subject to the limitations of paragraph (b)(4)(iii)(B) of this section, as described under paragraph (b)(4)(ii) of this section, shall collect and record all information necessary to demonstrate compliance with the limitations of paragraph (b)(4)(iii)(B) of this section for each emissions source and maintain the information at the facility for a period of three years. The information shall be collected and recorded each day of each

calendar year beginning in 1996 and ending with 2010.

(vi) *Testing and Monitoring.*

The Administrator may require, at any time, any owner or operator of a facility subject to the limitations of paragraph (b)(4)(iii)(B) of this section, as described under paragraph (b)(4)(ii) of this section, to perform tests using the applicable test methods and procedures specified in paragraph (a)(4) and/or to install monitoring equipment specified in paragraph (a)(4)(iv)(B) of this section to demonstrate compliance with the limitations of paragraph (b)(4)(iii)(B) of this section.

(5) *Commercial Food Preparation and/or Baking—(i) Definitions.* (A) For the purpose of this rule, the general definitions in paragraph (a)(3) of this section apply.

(B) For the purpose of this rule, the following definitions also apply:

Brandy-making facility means a facility that distills wine, the refuse of a wine press, or any other fermented fruit juices to produce alcoholic liquors.

Charcoal means any substance obtained by charring wood or any other organic matter by a process of smothered combustion to exclude air.

Commercial baking facility means a facility that bakes bread, biscuits, rolls, pies, cakes, cookies, or other similar products.

Commercial charbroiling facility means a facility that broils any type of food over a charcoal or gas-fired broiler.

Food preparation facility means any commercial baking, commercial charbroiling, wine- or brandy-making, fruit and vegetable preservation, grain mill production, vegetable oil production, or malt beverage production facility. This definition includes restaurants involved in activities described in the previous sentence.

Fruit and vegetable preservation facility means a facility that preserves food by, but not limited to, canning, curing, pickling, salting, smoking, cooking, or freezing.

Grain mill production facility means a facility that grinds any grain including, but not limited to, wheat, rice, corn, or rye into flour or meal.

Malt beverage production facility means a facility engaged in malting, fermentation, aging, or packaging of barley or any other grain for the purpose of producing an alcoholic beverage.

Vegetable oil production facility means a facility that extracts oil from any vegetable seed.

Wine- or brandy-making facility means a facility that ferments juices from grapes or any other fruit for the purpose of producing alcoholic beverages.

(ii) *Applicability.* (A) The requirements of paragraphs (b)(5)(iii)(A) and (b)(5)(iii)(B), (b)(5)(iv)(A), (b)(5)(v)(A), and (b)(5)(vi)(A) of this section shall apply to any owner or operator of a commercial food preparation facility located in the South Coast Air Basin and coastal waters within three miles of Orange and Los Angeles Counties at which VOC emissions are greater than or equal to 4.5 kg (10 lbs) during any one day.

(B) The requirements of paragraphs (b)(5)(iv)(B), (b)(5)(v)(B), and (b)(5)(vi)(B) of this section shall apply to any owner or operator of a commercial food preparation facility located in the applicable area specified in paragraph (b)(5)(ii)(A) at which total uncontrolled VOC emissions from all emissions sources are always less than 4.5 kg (10 lbs) during any one day. If VOC emissions from a facility which is exempt from the limitations of paragraph (b)(5)(iii)(B) of the section ever exceed 4.5 kg (10 lbs) during any one day on or after January 1, 1995, the facility will lose its exempt status, and the owner or operator shall comply with the requirements of paragraphs (b)(5)(iii)(B), (b)(5)(iv)(A), (b)(5)(v)(A), and (b)(5)(vi)(A) of this section beginning January 1 of the calendar year following the date of the exceedance.

(iii) *Specific provisions.* (A) Each owner or operator of a subject commercial food preparation facility shall submit a VOC emissions reduction compliance plan to the Administrator by January 1, 1993. The plan shall be prepared for the years 1996 through 2000 and shall include all of the information specified in paragraphs (b)(5)(iii)(A) (1) through (5) of this section. Subsequent plans may be required at a later date for the two five-year intervals from 2001 through 2010. Each owner or operator shall submit a revised plan to the Administrator within 30 calendar days of receipt of comments from the Administrator. Each owner or operator shall comply at all times with the provisions of the most recent plan submitted to the Administrator.

(1) The name, title, address, and telephone number of the owner or operator of the facility, and of each person responsible for preparing the information required under paragraph (b)(5)(iii)(A)(2) of this section.

(2) Baseline VOC emissions shall be calculated for each facility. Baseline emissions for each facility shall equal the sum of VOC emissions from all emissions sources at the facility including emissions associated with the use of architectural coatings and clean-up solvents. Baseline emissions shall be

based on the lower of the actual or allowable emissions rate and the actual production, throughput, or usage level for each emissions source. Baseline emissions shall be calculated for each emissions source in accordance with one of the procedures specified in paragraph (b)(5)(iii)(A)(2) (i) or (ii) of this section.

(i) If daily emissions records are available for the calendar years 1986 and 1987, baseline emissions shall be based on the median value of daily emissions recorded for the two-year period.

(ii) If daily emissions records are not available for the calendar years 1986 and 1987, baseline emissions shall be based on the average daily emissions value calculated for the two-year period. The average daily emissions value shall be calculated by dividing emissions for the two-year period by the operating or usage time for the two-year period. If solvent usage data are not available, emissions associated with solvent usage may be estimated from purchase-order records. The operating or usage time for the two-year period shall be based on one of the criteria specified in paragraphs (b)(5)(iii)(A)(2)(i) (A), (B), or (C) of this section.

(A) The number of days specified in a federally enforceable permit if the emissions source operated under the conditions of a federally enforceable permit which restricted operating times during the two-year period.

(B) The average number of days that the emissions source was operated or used over the two-year period if documentation is available to support the number, or

(C) 730 days if documentation of the number of days that the emissions source was operated or used over the two-year period is not available.

(3) Methods to be employed by the owner or operator to limit VOC emissions from emissions sources to within the emissions level required in paragraph (b)(5)(iii)(B) of this section. Methods may include but are not limited to:

(i) Installation of capture systems and control devices,

(ii) Modifications to increase the efficiency of existing capture systems and/or control devices,

(iii) Process modifications and/or substitutions, and

(iv) Reduction in operating schedules for one or more emissions sources at the facility.

(4) Test or demonstration methods used to demonstrate achievement of the VOC emissions reductions required in paragraph (b)(5)(iii)(B) of this section.

The methods may include but are not limited to:

(i) The test methods and procedures specified in paragraph (a)(4) of this section.

(ii) Data and engineering calculations documenting process modifications that were made to reduce VOC emissions, and

(iii) Operating schedules for baseline emissions levels and for emissions levels starting January 1, 1996, continuing for a period not less than 15 years, for those facilities choosing to comply through use of reduced operating schedules.

(5) Projections of annual VOC emissions for each emissions source through the year 2010 after application of the reduction methods described in paragraph (b)(5)(iii)(A)(3) of this section.

(B) Beginning January 1, 1996, each owner or operator of a facility which is subject to the limitations of this paragraph, as described under paragraph (b)(5)(ii)(A) of this section shall limit total VOC emissions from the subject facility to the level calculated by the following equation:

$$R_n < \sum_{i=1}^n R_{oi} - \sum_{i=1}^n R_{oi} [(N-1995) (0.06)]$$

where

R_N = Allowable VOC emissions during calendar year "N" for all emissions sources at the facility in units of kg (lbs) per day,

R_{oi} = Baseline VOC emissions in units of kg (lbs) per day for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (iii)(A)(2).

N = Current calendar year. N will remain equal to 2010 subsequent to the calendar year 2010,

i = Subscript denoting a specific emissions source, and

n = Total number of emissions sources at the facility.

(iv) *Reporting.* (A) Each owner or operator of a facility which is subject to the limitations of paragraph (b)(5)(iii)(B) of this section, as described under paragraph (b)(5)(ii)(A) of this section shall submit to the Administrator by March 1 of each calendar year, beginning in 1997, a certification of compliance with this rule for the previous calendar year. This certification shall include:

(1) A declaration that the facility is in compliance with all of the requirements of this rule, and

(2) Documentation of methods used to achieve the VOC emissions reductions required in paragraph (b)(5)(iii)(B) of this section. The documentation must be

presented in a format equivalent to Table 1 [see to (b)(1) Table 1].

(B) Each owner or operator of a facility which is exempt from the limitations of paragraph (b)(5)(iii)(B) of this section, as described under paragraph (b)(5)(ii)(B) of this section shall comply with the following:

(1) By January 1, 1995, the owner or operator shall certify to the Administrator that the facility is exempt from the limitations of paragraph (b)(5)(iii)(B) of this section. This certification shall include:

(i) A declaration that the facility is exempt from the limitations of paragraph (b)(5)(iii)(B) of this section, as described under paragraph (b)(5)(ii)(B) of this section, and

(ii) Calculations which demonstrate that total baseline VOC emissions from all emissions sources at the facility are and will remain less than 4.5 kg (10 lbs) during any one day. Baseline emissions shall be calculated in accordance with the procedures specified in paragraphs (b)(5)(iii)(A)(2) (i) and (ii) of this section.

(2) On and after January 1, 1995, the owner or operator shall notify the Administrator of any record showing that total VOC emissions from the facility exceeded 4.5 kg (10 lbs) during any one day by sending a copy of such record to the Administrator within 30 calendar days after the exceedance occurs.

(v) *Recordkeeping.* (A) Each owner or operator of a facility which is subject to the limitations of paragraph (b)(5)(iii)(B) of this section, as described under paragraph (b)(5)(ii)(A) of this section, shall collect and record all information necessary to demonstrate compliance with the limitations of paragraph (b)(5)(iii)(B) of this section for each emissions source and maintain the information at the facility for a period of three years. The information shall be collected and recorded each day of each calendar year beginning in 1996 and ending with 2010.

(B) Each owner or operator of a facility which is exempt from the limitations of paragraph (b)(5)(iii)(B) of this section, as described under paragraph (b)(5)(ii)(B) of this section, shall collect and record all information necessary to demonstrate that total VOC emissions from all emissions sources are less than 4.5 kg (10 lbs) during each day and maintain the information at the facility for a period of three years. The information shall be collected and recorded each day of each calendar year beginning in 1996 and ending with 2010.

(vi) *Testing and monitoring.* (A) The Administrator may require, at any time,

any owner or operator of a facility subject to the limitations of paragraph (b)(5)(iii)(B) of this section, as described under paragraph (b)(5)(ii)(A) of this section, to perform tests using the applicable test methods and procedures specified in paragraph (a)(4) of this section and/or to install monitoring equipment specified in paragraph (a)(4)(iv)(B) of this section to demonstrate compliance with the limitations of paragraph (iii)(B).

(B) The Administrator may require, at any time, any owner or operator of a facility which is exempt from the limitations of paragraph (b)(5)(iii)(B) of this section because of paragraph (b)(5)(ii)(B) of this section to perform tests using the applicable test methods and procedures specified in paragraph (a)(4) of this section to demonstrate that the facility is exempt from the limitations of paragraph (b)(5)(iii)(B) of this section.

(6) *Petroleum and Natural Gas Extraction, Processing, and Storage—(i) Definitions.* (A) For the purpose of this rule, the general definitions in paragraph (a)(3) of this section apply.

(B) For the purpose of this rule, the following definitions also apply:

Crude oil means a naturally occurring mixture which consists of hydrocarbons and sulfur, nitrogen, or oxygen derivatives of hydrocarbons and which is a liquid at standard conditions.

Extraction facility means any facility where drilling and servicing equipment, flow lines, separators, gathering lines, and auxiliary nontransportation related equipment are used to extract petroleum or natural gas from a well.

Gasoline means any petroleum distillate which is used as a motor fuel.

Petroleum means the crude oil removed from the earth and the oils derived from tar sands, shale, and coal.

Processing facility means any facility where petroleum or natural gas is used as a feedstock to produce gasoline, kerosene, distillate fuel oils, residual fuel oils, lubricants, or other related products.

Storage facility means any extraction facility, processing facility, bulk gasoline plant, bulk gasoline terminal, or any petroleum storage facility which distributes petroleum, natural gas, or gasoline to retail outlet and wholesale purchaser-consumer facilities. This definition does not apply to retail gasoline service stations.

(ii) *Applicability.* The requirements of paragraphs (b)(6)(iii), (iv), (v), and (vi) of this section shall apply to any owner or operator of any petroleum or natural gas extraction, processing, or storage facility located in the South Coast Air Basin and coastal waters within three

miles of Orange and Los Angeles Counties.

(iii) *Specific provisions.* (A) Each owner or operator of a petroleum or natural gas extraction, processing, or storage facility shall submit a VOC emissions reduction compliance plan to the Administrator by January 1, 1993. The plan shall be prepared for the years 1996 through 2000 and shall include all of the information specified in paragraphs (b)(6)(iii)(A) (1) through (5) of this section. Subsequent plans may be required at a later date for the two five-year intervals from 2001 through 2010. Each owner or operator shall submit a revised plan to the Administrator within 30 calendar days of receipt of comments from the Administrator. Each owner or operator shall comply at all times with the provisions of the most recent plan submitted to the Administrator.

(1) The name, title, address, and telephone number of the owner or operator of the facility, and of each person responsible for preparing the information required under paragraph (b)(6)(iii)(A)(2) of this section.

(2) Baseline VOC emissions shall be calculated for each facility. Baseline emissions for each facility shall equal the sum of VOC emissions from all emissions sources at the facility including emissions associated with the use of architectural coatings and clean-up solvents. Baseline emissions shall be based on the lower of the actual or allowable emissions rate and the actual production, throughput, or usage level for each emissions source. Baseline emissions shall be calculated for each emissions source in accordance with one of the procedures specified in paragraph (b)(6)(iii)(A)(2) (i) or (ii) of this section.

(i) If daily emissions records are available for the calendar years 1986 and 1987, baseline emissions shall be based on the median value of daily emissions recorded for the two-year period.

(ii) If daily emissions records are not available for the calendar years 1986 and 1987, baseline emissions shall be based on the average daily emissions value calculated for the two-year period. The average daily emissions value shall be calculated by dividing emissions for the two-year period by the operating time for the two-year period. The operating time for the two-year period shall be based on one of the criteria specified in paragraph (b)(6)(iii)(A)(2)(ii) (A), (B), or (C) of this section.

(A) The number of days specified in a federally enforceable permit if the emissions source operated under the conditions of a federally enforceable

permit which restricted operating times during the two-year period.

(B) The average number of days that the emissions source was operated over the two-year period if documentation is available to support the number, or

(C) 730 days if documentation of the number of days that the emissions source was operated over the two-year period is not available.

(3) Methods to be employed by the owner or operator to limit VOC emissions from emissions sources to within the emissions level required in paragraph (b)(6)(iii)(B) of this section. Methods may include but are not limited to:

(i) Installation of capture systems and control devices;

(ii) Modifications to increase the efficiency of existing capture systems and/or control devices;

(iii) Process modifications and/or substitutions; and

(iv) Installation of leak-proof valves or other quipment.

(4) Test or demonstration methods used to demonstrate achievement of the VOC emissions reductions required in paragraph (b)(6)(iii)(B) of this section. The methods may include but are not limited to:

(i) The test methods and procedures specified in paragraph (a)(4) of this section.

(ii) Data and engineering calculations documenting process modifications that were made to reduce VOC emissions, and

(iii) Operating schedules for baseline emissions levels and for emissions levels starting January 1, 1996, continuing for a period not less than 15 years, for those facilities choosing to comply through use of reduced operating schedules.

(5) Projections of annual VOC emissions for each emissions source through the year 2010 after application of the reduction methods described in paragraph (b)(6)(iii)(A)(3) of this section.

(B) Beginning January 1, 1996, each owner or operator of a facility which is subject to the limitations of this paragraph because of paragraph (b)(6)(ii) of this section shall limit total VOC emissions from the subject facility to the level calculated by the following equation:

$$R_n < \sum_{i=1}^n R_{oi} - \sum_{i=1}^n R_{oi} [(N-1995) (0.06)]$$

where

R_n = Allowable VOC emissions during calendar year "N" for all emissions sources at the facility in units of kg (lbs) per day,

R_0 = Baseline VOC emissions in units of kg (lbs) per day for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(6)(iii)(A)(2) of this section.

N = Current calendar year. N will remain equal to 2010 subsequent to the calendar year 2010.

s = Subscript denoting a specific emissions source, and

n = Total number of emissions sources at the facility.

(iv) **Reporting.** Each owner or operator of a facility which is subject to the limitations of paragraph (b)(6)(iii)(B) of this section because of paragraph (b)(6)(ii) of this section shall submit to the Administrator by March 1 of each calendar year, beginning in 1997, a certification of compliance with this rule for the previous calendar year. This certification shall include:

(A) A declaration that the facility is in compliance with all of the requirements of this rule, and

(B) Documentation of methods used to achieve the VOC emissions reductions required in paragraph (b)(6)(iii)(B) of this section. The documentation must be presented in a format equivalent to Table 1 (see § 352.264(b)(1) Table 1).

(v) **Recordkeeping.** Each owner or operator of a facility which is subject to the limitations of paragraph (b)(6)(iii)(B) of this section because of paragraph (b)(6)(ii) of this section shall collect and record all information necessary to demonstrate compliance with the limitations of paragraph (b)(6)(iii)(B) of this section for each emissions source and maintain the information at the facility for a period of three years. The information shall be collected and recorded each day of each calendar year beginning in 1996 and ending with 2010.

(vi) **Testing and monitoring.** The Administrator may require, at any time, any owner or operator of a facility subject to the limitations of paragraph (b)(6)(iii)(B) of this section because of paragraph (b)(6)(ii) of this section to perform tests using the applicable test methods and procedures specified in paragraph (a)(4) of this section and/or to install monitoring equipment specified in paragraph (a)(4)(iv)(B) of this section to demonstrate compliance with the limitations of paragraph (b)(6)(iii)(B) of this section.

(7) **Consumer Products—(i) Definitions.** (A) For the purpose of this rule, the general definitions in paragraph (a)(3) of this section apply.

(B) For the purpose of this rule, the following definitions also apply:

Aerosol paint and finish product means any aerosol consumer product including, but not limited to, graffiti remover, paint, primer, varnish, stripper,

and snow and other decorative products. Architectural coatings are excluded from this definition.

Aerosol product means a pressurized spray system including but not limited to sprays, foams, and gels that dispense product ingredients.

Architectural coating means any nonaerosol coating applied to stationary structures and their appurtenances including, but not limited to, commercial industrial, or institutional buildings, pavements, curbs, and stationary and mobile homes.

Automotive, industrial, and mechanical equipment product means any consumer product which is used on or in mobile, industrial, or mechanical equipment including, but not limited to, automobiles, buses, motorcycles, trucks, vans, heavy off-highway vehicles, stationary internal combustion engines, and lawn or garden equipment.

Automotive, industrial, and mechanical equipment products include, but are not limited to, brake cleaners; bug and tar removers; carburetor-choke cleaners; chrome polishes; engine degreasers; engine starting fluids; injector valve, intake valve, and gasoline treatments; leather and vinyl cleaners; lubricants and silicones; refrigerants; spray undercoats; tire colorants; tire inflators and sealants; wheel cleaners; windshield and lock spray deicers; and windshield washer fluids.

Consortium means a partnership, an agreement between, or an association of two or more persons.

Consumer pesticide product means any consumer product which is registered under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136, et seq., and is designed or intended to prevent, destroy, repel, or mitigate any pest. These products include, but are not limited to, disinfectants, fungicides, herbicides, insecticides, and rodenticides.

Consumer product means any chemically-formulated aerosol or nonaerosol product which is used by household, institutional, commercial, or industrial consumers. This definition does not include solvents, coatings, adhesives, inks, or gases which industrial or commercial consumers use in manufacturing processes which are subject to any of the requirements of the industrial and commercial solvent use rule.

Distribute means to sell, supply, or offer for sale any consumer product to any person in the applicable area specified in paragraph (b)(7)(ii)(A) of this section.

Distribution facility means any facility from which a distributor obtains a consumer product which will be sold,

supplied, offered for sale, used, or distributed in the applicable area specified in paragraph (b)(7)(ii)(A) of this section.

Distributor means any person who transports or stores or causes the transportation or storage of any consumer product at any point between any consumer product manufacturing or reformulating facility and any person.

Food product means any consumer product which is dispensed from an aerosol container and used to prepare food including, but not limited to, pan sprays.

Household product means any consumer product which is intended for household use to clean, deodorize, disinfect, wash, or polish garments or household surfaces or fabrics or to deodorize or disinfect indoor air including, but not limited to, adhesives and sealants, air fresheners, ball and porous tip pens, bathroom and tile cleaners, charcoal lighter fluids, deodorants, floor polishes, furniture coatings, furniture maintenance products, general purpose cleaners, glass cleaners, laundry detergents, laundry prewashes, lubricants, metal cleaners, metal polishes, oven cleaners, rug and upholstery cleaners, rug deodorizers, shoe polishes, spot removers, and toilet bowl cleaners.

Manufacture means to produce or combine any ingredients to produce any consumer product for packaging or distribution.

Manufacturing facility means any facility where any ingredients are produced or combined to produce any consumer product for packaging or distribution.

Other consumer product means any consumer product which is not classified as an animal; automotive, industrial, and mechanical equipment; consumer pesticide; food; household; paint and finish; or personal care product.

Package means to fill or refill any container with any consumer product which will be sold, supplied, offered for sale, or distributed in the applicable area specified in paragraph (b)(7)(ii)(A) of this section.

Packaging facility means any facility where any container is filled or refilled with any consumer product which will be sold, supplied, offered for sale, or distributed in the applicable area specified in paragraph (b)(7)(ii)(A) of this section.

Personal care product means any consumer product applied to the body of a human being including, but not limited to, after shave, antiperspirant, cleaning lotion, cologne, deodorant, hair mousse,

hair rinse, hairspray, hair-styling gel, hair tonic, hand lotion, hand soap, mouth wash, nail polish, nail-polish remover, perfume, pre-shave, rubbing alcohol, shampoo, shaving lather, suntan lotion, and suntan prep. Prescription drugs are excluded from this definition.

Reformulate means to combine, mix, or blend any ingredients to produce any consumer product for packaging or distribution.

Reformulating facility means any facility where any ingredients are combined, mixed, or blended to produce any consumer product for packaging or distribution.

Retailer means any person who owns, leases, operates, controls, or supervises a retail outlet.

Retail outlet means any establishment at which consumer products are sold, offered for sale, or otherwise distributed directly to consumers.

Wholesale purchaser-consumer means the owner or operator of any business that is in ultimate consumer of any consumer product and which obtains any consumer product from a distributor for use in the applicable area specified in paragraph (b)(7)(ii)(A) of this section.

(ii) *Applicability.* (A) The requirements of paragraphs (b)(7)(iii)(A), (iii)(B), (v)(A), (iv) and (vi) of this section shall apply to any person who manufactures and/or reformulates any consumer product which is sold, supplied, offered for sale, or distributed in the South Coast Air Basin and coastal waters within three miles of Orange and Los Angeles Counties on and after January 1, 1996.

(B) The requirements of paragraphs (b)(7)(iii)(C), (iii)(D), and (v)(B) of this section shall apply to any person who distributes any consumer product which is sold, supplied, offered for sale, or distributed in the applicable area specified in paragraph (b)(7)(ii)(A) of this section on and after January 1, 1996.

(C) The requirements of paragraphs (b)(7)(iii)(C), (iii)(D), and (v)(C) shall apply to any person who packages any consumer product which is sold, supplied, offered for sale, or distributed in the applicable area specified in paragraph (b)(7)(ii)(A) of this section on and after January 1, 1996.

(D) The requirements of paragraph (b)(7)(v)(D) of this section shall apply to any retailer and any wholesale purchaser-consumer who sells, supplies, offers for sale, or uses any consumer product in the applicable area specified in paragraph (b)(7)(ii)(A) of this section on and after January 1, 1996.

(E) The requirements of paragraph (b)(7)(iii), (iv), (v), and (vi) of this section shall not apply to any person located in

the applicable area specified in paragraph (b)(7)(ii)(A) of this section who manufactures, reformulates, packages, or distributes any consumer product which is sold, supplied, offered for sale, or distributed outside of the applicable area specified in paragraph (b)(7)(ii)(A) of this section.

(iii) *Specific provisions.* (A) Each person, or each consortium of persons, who manufactures and/or reformulates any consumer product shall register with the Administrator as a registered manufacturer or reformulator by submitting all of the information specified in paragraphs (b)(7)(iii)(A)(1) through (5) of this section to the Administrator by January 1, 1993. Upon request by the Administrator, each person or each consortium of persons shall submit any additional information necessary to fulfill the registration requirements within 30 calendar days of receipt of the request.

(1) The name, title, address, and telephone number of the owner or operator of each facility where consumer products will be manufactured and/or reformulated.

(2) The name, title, address, and telephone number of each person responsible for preparing the information required under paragraphs (b)(7)(iii)(A) (3) through (5) of this section.

(3) The name, address, and telephone number of each facility where consumer products will be manufactured and/or reformulated. The information required under paragraphs (b)(7)(iii)(A) (4) through (5) of this section shall be prepared and submitted to the Administrator for each facility and the total for all facilities identified under this paragraph.

(4) Each consumer product shall be classified under one of the following consumer product categories:

- (i) Aerosol paint and finish products,
- (ii) Automotive, industrial, and mechanical equipment products,
- (iii) Consumer pesticide products,
- (iv) Food products,
- (v) Household products,
- (vi) Personal care products, or
- (vii) Other products not classified under paragraphs (b)(7)(iii)(A)(4) (i) through (vii) of this section.

(5) The baseline VOC mass for 1988 (R_o) shall be calculated for each consumer product classified under each consumer product category specified in paragraph (b)(7)(iii)(A)(4) (i) in units of kg (lbs) per year. The data and calculations used to calculate the baseline VOC mass shall be submitted to the Administrator. The baseline VOC mass shall be calculated on a weight-weight basis by using the equation specified in

paragraph (b)(7)(iii)(A)(5)(i) below or on a weight-volume basis by using the equation specified in paragraph (b)(7)(iii)(A)(5)(ii) below.

(i) Calculation of baseline VOC mass on a weight-weight basis.

$$R_o = \sum_{i=1}^n \sum_{j=1}^m (VOC_{wi})(W_j)$$

where

R_o = Total baseline VOC mass contained in all consumer products classified under a consumer product category for the base year 1988 in units of kg (lbs) per year (e.g., personal care products).

n = Total number of consumer product types classified under a consumer product category (e.g., deodorants or hairsprays).

i = Subscript denoting a specific consumer product type (e.g., deodorants or hairsprays).

m = Total number of application methods used to dispense each consumer product type from containers (e.g., stick or roll-on deodorants).

j = Subscript denoting a specific type of application method (e.g., stick or roll-on deodorant).

VOC_{wi} = The average VOC content (excluding the weight of the container and applicator) for all container sizes within a specific consumer product type (n) and application method (j) in units of fraction by weight (e.g., the average weight of VOC per unit weight of stick deodorants for all container sizes), and

W_j = Total weight of product (excluding the weight of the container and applicator) for all container sizes within a specific consumer product type (n) and application method (j) in units of kg (lbs) (e.g., the sum of the weight of all stick deodorant containers sold, supplied, offered for sale, or distributed in the applicable area specified in paragraph (b)(7)(ii)(A) of this section).

(ii) Calculation of baseline VOC mass on a weight-volume basis

$$R_o = \sum_{i=1}^n \sum_{j=1}^m (VOC_{vi})(V_j)$$

where

R_o = Total baseline VOC mass contained in all consumer products classified under a consumer product category for the base year 1988 in units of kg (lbs) per year (e.g., personal care products).

n = Total number of consumer product types classified under a consumer product category (e.g., deodorants or hairsprays).

i = Subscript denoting a specific consumer product type (e.g., deodorants or hairsprays).

m = Total number of application methods used to dispense each consumer product type from containers (e.g., stick or roll-on deodorants).

j = Subscript denoting a specific type of application method (e.g., aerosol or pump hairsprays).

VOC_{av} = The average VOC content (excluding the weight of the container and applicator) for all container sizes within a specific consumer product type (n) and application method (j) in units of grams VOC/liter (lbs VOC/gal) of product (e.g., the average weight of VOC per unit volume of aerosol hairsprays for all container sizes), and

V_j = Total volume of product for all container sizes within a specific consumer product type (n) and application method (j) in units of liters (gal) (e.g., the sum of the volume of all aerosol hairspray containers sold, supplied, offered for sale, or distributed in the applicable area specified in paragraph (b)(7)(ii)(A) of this section).

(B) Beginning January 1, 1996, each person, or each consortium of persons, who manufactures and/or reformulates any consumer product shall limit the total VOC mass of each consumer product category specified in paragraph (b)(7)(iii)(A)(4) of this section to the level calculated by the following equation.

$$R_N = R_0 - R_0[(N - 1995)(0.06)]$$

where

R_N = Total allowable VOC mass contained in all consumer products classified under a consumer product category during calendar year "N" in units of kg (lbs) per year.

R_0 = Total baseline VOC mass contained in all consumer products classified under a consumer product category for the base year 1988 in units of kg (lbs) per year.

N = Current calendar year. N shall remain equal to 2010 subsequent to the calendar year 2010.

(C) Each person who packages or distributes any consumer product shall register with the Administrator as a registered packager or distributor by submitting all of the information specified in paragraphs (b)(7)(iii)(C) (1) and (2) of this section to the Administrator by January 1, 1994. Upon request by the Administrator, each person shall submit any additional information necessary to fulfill the registration requirements within 30 calendar days of receipt of the request.

(1) The name, title, address, and telephone number of each person responsible for distributing consumer products, and

(2) The name, address, and telephone number of each packaging or distribution facility.

(D) No person shall package or distribute any consumer product which will be sold, supplied, offered for sale, or distributed in the applicable area specified in paragraph (b)(7)(ii)(A) of this section on and after January 1, 1996, unless such person complies with all of the following requirements.

(1) The consumer product is obtained from a person, or a consortium of

persons, registered with the Administrator to manufacture and/or reformulate the consumer product for use in the applicable area specified in paragraph (b)(7)(ii)(A) of this section.

(2) The following labeling requirements shall apply to each consumer product which is classified under a consumer product category subject to the limitations of paragraph (b)(7)(iii)(B) of this section. Any consumer product registered under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136, et seq., shall be exempt from the following labeling requirements.

(i) A label shall be affixed to each container which displays the date on which the container was filled, the VOC content of the product in units of percent by weight, the consumer product category under which the product is classified, and a declaration that the consumer product was manufactured, reformulated, packaged, and/or distributed in accordance with the requirements of this rule.

(ii) If a bar code or any other closed-code dating system is used to indicate the date on which the container is filled, an explanation of the code must be filed with the Administrator by the date on which the product bearing the code will be sold, supplied, offered for sale, or distributed in the applicable area specified in paragraph (b)(7)(ii)(A) of this section.

(iv) *Reporting.* Each person, or each consortium of persons, who manufactures and/or reformulates any consumer product subject to the limitations of paragraph (b)(7)(iii)(B) of this section shall submit to the Administrator by March 1 of each calendar year, beginning in 1997, a certification of compliance with this rule for the previous calendar year. The certification shall include all of the information specified in paragraphs (b)(7)(iv) (A) through (F) of this section.

(A) A declaration that each person is in compliance with paragraph (b)(7)(iii)(B) of this section.

(B) Documentation of methods used to achieve the VOC reductions required in paragraph (b)(7)(iii)(B) of this section for each consumer product category. Such methods shall include either limiting the VOC content of individual types of consumer products and/or limiting the quantity of consumer products sold, supplied, offered for sale, or distributed within the applicable area specified in paragraph (b)(7)(ii)(A) of this section.

(C) Test or demonstration methods used to demonstrate achievement of the VOC reductions required in paragraph (b)(7)(iii)(B) of this section.

(D) Projections of total VOC mass for each consumer product category for the next five-year period after the application of the reduction methods described in paragraph (b)(7)(iv)(B) of this section.

(E) The documentation required in paragraphs (b)(7)(iv) (B), (C), and (D) of this section shall be submitted to the Administrator in a format equivalent to Table 1 (see § 52.264 (b)(1) Table 1).

(F) The name, address, and telephone number of each facility to which each manufacturing and/or reformulating facility initially sent each consumer product for packaging and/or distribution during the previous calendar year.

(v) *Recordkeeping.* (A) Each person, or each consortium of persons, who manufactures and/or reformulates any consumer product subject to the limitations of paragraph (b)(7)(iii)(B) of this section shall collect and record all information necessary to demonstrate compliance with paragraphs (b)(7)(iii)(A), (iii)(B), and (iv) of this section for each calendar year beginning in 1996 and ending with 2010 and maintain the information at each facility for a period of three years.

(B) Each person who distributes any consumer product subject to the limitations of paragraph (b)(7)(iii)(B) of this section shall collect and record all information necessary to demonstrate compliance with paragraphs (b)(7)(iii)(C) and (iii)(D) of this section for each calendar year beginning in 1996 and ending with 2010 and maintain the information at each facility for a period of three years. The information shall include but not be limited to the following:

(1) A copy of registration forms and any records (e.g. purchase order forms) necessary to document that each consumer product was obtained from a manufacturer or reformulator registered with the Administrator, and

(2) The name and address of each retailer or wholesale purchaser-consumer to which each consumer product is initially distributed.

(C) Each person who packages any consumer product subject to the limitations of paragraph (b)(7)(iii)(B) of this section shall collect and record all information necessary to demonstrate compliance with paragraphs (b)(7)(iii)(C) and (iii)(D) of this section for each calendar year beginning in 1996 and ending with 2010 and maintain the information at each facility for a period of three years. The information shall include but not be limited to a copy of registration forms and any records (e.g. purchase order forms) necessary to

document that each consumer product formulation is obtained from a manufacturer or reformulator registered with the Administrator.

(D) Each retailer and each wholesale purchaser-consumer who sells, supplies, offers for sale, or uses any consumer product in the applicable area specified in paragraph (b)(7)(ii)(A) of this section on and after January 1, 1996, shall collect and record all information necessary to demonstrate that each consumer product was obtained from a packaging or distribution facility which is registered with the Administrator to package or distribute consumer products in the applicable area specified in paragraph (b)(7)(ii)(A) of this section. The information shall include, but not be limited to, a copy of registration forms and any records (e.g., purchase order forms) necessary to document that each consumer product is obtained from a packaging or distribution facility registered with the Administrator. The information shall be collected and recorded for each calendar year beginning in 1996 and ending with 2010 and maintained at each facility for a period of three years.

(vi) *Test methods.* (A) The Administrator may require, at any time, any person who manufactures and/or reformulates any consumer product subject to the limitations of paragraph (b)(7)(iii)(B) of this section to perform tests to demonstrate compliance with the limitations of paragraph (b)(7)(iii)(B) of this section. Such tests shall be performed to determine the VOC content of the consumer product formulation, including any propellant, before packaging. The results of tests conducted by any person who manufactures and/or reformulates a consumer product to determine the VOC content of the consumer product shall be subject to verification by the Administrator. In determining compliance with the requirements of this rule, the results of tests conducted by the Administrator to determine the VOC content of consumer products shall take precedence over the results of tests conducted by others to determine that VOC content.

(B) Testing to determine the VOC content of a consumer product, or to determine compliance with the requirements of this rule, shall be performed using one or more of the following methods or any other test methods approved by the Administrator: (1) Method 24 or 24A, part 60, title 40, Code of Federal Regulations, appendix A, July 1, 1988; (2) Method 18, Federal Register 48, No. 202, October 18, 1983; (3) Method 1400, NIOSH Manual of

Analytical Methods, Volume 1, February 1984; or (4) U.S. EPA Method 8240 GC/MS Method for Volatile Organics, September 1986.

(8) *Pesticide Products*—(i) *Definitions.* (A) For the purpose of this rule, the general definitions in section (a)(3) of this section apply.

(B) For the purpose of this rule, the following definitions also apply:

Agricultural use means the use of any pesticide or method or device for the control of plant or animal pests, or any other pests, or the use of any pesticide for the regulation of plant growth or defoliation of plants. It excludes the sale or use of pesticides in properly labeled packages or containers which are intended for any of the following:

(1) Home use.

(2) Use in structural pest control.

(3) Industrial or institutional use.

(4) The control of an animal pest under the written prescription of a veterinarian.

Animal means all vertebrate and invertebrate species, including but not limited to man and other mammals, birds, fish, and shellfish.

Consortium means a partnership, an agreement between, or an association of two or more persons.

Consumer pesticide product means any consumer product intended for home use and which is registered under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136, et seq., and is designed or intended to prevent, destroy, repel, or mitigate any pest. Consumer pesticide products are included under the Consumer Products backstop measure and not included within the Pesticide Products backstop measure.

Defoliant means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.

Desiccant means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

Fungus means any non-chlorophyll-bearing thallophyte (that is, any non-chlorophyll-bearing plant of a lower order than mosses and liverworts), as for example, rust, smut, mildew, mold, yeast, and bacteria, except those on or in living man or other animals and those on or in processed food, beverages, or pharmaceuticals.

Home use means use in a household or its immediate environment.

Industrial use means use for or in manufacturing, mining or chemical process or use in the operation of

factories, processing plants, and similar sites.

Institutional use means use within the confines of, or on property necessary for the operation of buildings such as hospitals, schools, libraries, auditoriums and office complexes.

Insect means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six-legged, usually winged forms, as for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as for example, spiders, mites, ticks, centipedes, and wood lice.

Nematode means invertebrate animals of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform, or saclike bodies covered with cuticle, and inhabiting soil, water, plants, or plant parts; may also be called nemas or eelworms.

Non-agricultural pesticide product means any pesticide product not considered for use within the definition of "agricultural use" as described under this section, and includes home use, use in structural pest control, industrial or institutional use, and the control of an animal pest under the written prescription of a veterinarian. For the purposes of this regulation, pesticides intended for home use would be regulated under the Consumer Products backstop measure.

Registrant means any person who has registered any pesticide with the California Department of Food and Agriculture and the Environmental Protection Agency.

Pest means any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organisms on or in living man or other living animals) which the Administrator declares to be a pest under section 25(c)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136, et seq.

Pesticide means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest and any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant, except that the term "pesticide" shall not include any article that is a "new animal drug" within the meaning of section 201(w) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(w)), or that has been determined by

the Secretary of Health and Human Services not to be a new animal drug by a regulation establishing conditions of use for the article, or that is an animal feed within the meaning of section 201(x) of such Act (21 U.S.C. 321(x)) bearing or containing a new animal drug.

Plant regulator means any substance or mixture of substances intended, through physiological action, or accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of plants or the produce thereof, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments. Also, the term "plant regulator" shall not be required to include any of such of those nutrient mixtures or soil amendments as are commonly known as vitamin-hormone horticultural products, intended for improvement, maintenance, survival, health and propagation of plants, and as are not for pest destruction and are non-toxic nonpoisonous in the undiluted packaged concentration.

Producer means the person who manufactures, prepares, compounds, propagates, or processes any pesticide or device or active ingredient used in producing a pesticide.

Produce means to manufacture, prepare, compound, propagate, or process any pesticide or device or active ingredient used in producing a pesticide. The dilution by individuals of formulated pesticides for their own use and according to the directions on registered labels shall not in itself result in such individuals being included in the definition of "producer" for purposes of this regulation.

Structural use means a use requiring a license under Chapter 14 (commencing with section 8500), Division 3 of the (California) Business and Professions Code.

Weed means any plant which grows where not wanted.

(ii) **Applicability.** (A) The requirements of paragraphs (b)(8)(iii)(A), (iii)(B), (v)(A), (iv) and (vi) of this section shall apply to any registrant or consortium of registrants who have registered any pesticide with the California Department of Food and Agriculture and the pesticide is sold, supplied, offered for sale, or distributed in the South Coast Air Basin and coastal waters within three miles of Orange and Los Angeles Counties on and after January 1, 1996.

(B) The requirements of paragraphs (b)(8) (iii), (iv), (v), and (vi) of this section shall not apply to any registrant

or producer whose pesticide product is sold, supplied, offered for sale, or distributed outside of the applicable area specified in paragraph (b)(8)(ii)(A) of this section.

(C) Pesticide products intended for home use are exempt from the requirements of the rule, but are subject to the requirements of the Consumer Products backstop measure. Wood preservatives intended for home use are exempt from the requirements of this rule, but are subject to the requirements of the Architectural Coatings backstop measure.

(iii) **Specific provisions.** (A) Each person, or each consortium of persons, who registers any pesticide to be used in the applicable area described under paragraph (b)(8)(ii)(A) of this section shall submit to the Administrator all of the information specified in paragraphs (b)(8)(iii)(A) (1) through (5) of this section by January 1, 1993. This information will serve as a certification for purposes of this regulation. Upon request by the Administrator, each person or each consortium of persons shall submit additional information necessary to fulfill the requirements within 30 calendar days of receipt of the request.

(1) The name, title, address, and telephone number of the owner of the registrant.

(2) The name, title, address, and telephone number of each person responsible for preparing the information required under paragraphs (b)(8)(iii)(A) (3) through (5) of this section.

(3) The name, address, and telephone number of each producer and associated EPA registration number for each pesticide used within the affected area described under paragraph (b)(8)(ii)(A) of this section. Information required under paragraphs (b)(8)(iii)(A) (4) through (5) of this section shall be prepared and submitted to the Administrator for each registrant or consortium of registrants for all pesticides covered under this regulation.

(4) Each pesticide product shall be classified under one of the following agricultural use or non-agricultural pesticide product categories:

Product categories

Disinfectants,
Fungicides,
Herbicides,
Insecticides,
Rodenticides, or
Other agricultural pesticide products not classified under (b)(8)(iii)(A)(4)(i).

(5) The baseline VOC mass for 1990 (R_o) shall be calculated for each pesticide product classified under each

pesticide product category specified in paragraph (b)(8)(iii)(A)(4) of this section in units of kg (lbs) per year. The data and calculations used to calculate the baseline VOC mass shall be submitted to the Administrator. The baseline VOC mass shall be calculated on a weight-weight basis by using the equation specified in paragraph (b)(8)(iii)(A)(5)(i) of this section or on a weight-volume basis by using the equation specified in paragraph (b)(8)(iii)(A)(5)(ii) of this section.

(i) Calculation of baseline VOC mass on a weight-weight basis.

$$R_o = \sum_{i=1}^n \sum_{j=1}^m (VOC_{wji})(W_j)$$

where

R_o = Total baseline VOC mass contained in all pesticide products classified under a pesticide product category for the base year 1990 in units of kg (lbs) per year (e.g., agricultural insecticide products),

n = Total number of pesticide product types classified under a pesticide product category. Product type means the use and the pest for which the pesticide is manufactured and/or reformulated,

i = Subscript denoting a specific pesticide product type. Product type means the use and the pest for which the pesticide is manufactured and/or reformulated,

m = Total number of product forms used to apply each pesticide product type from containers (e.g., wettable powder or granule),

j = Subscript denoting a specific type of product form (e.g., wettable powder or granule),

VOC_{wji} = The average VOC content (excluding the weight of the container and applicator) for all container sizes within a specific pesticide product type (n) and product form (j) in units of fraction by weight, and

W_j = Total weight of product (excluding the weight of the container and applicator) for all container sizes within a specific pesticide product type (n) and product form (j) in units of kg (lbs) (e.g., the sum of the weight of all granule insecticide containers sold, supplied, offered for sale, or distributed in the applicable area specified in paragraph (b)(8)(ii)(A) of this section).

(ii) Calculation of baseline VOC mass on a weight-volume basis

$$R_o = \sum_{i=1}^n \sum_{j=1}^m (VOC_{vji})(V_j)$$

where

R_o = Total baseline VOC mass contained in all pesticide products classified under a pesticide product category for the base year 1990 in units of kg (lbs) per year (e.g., agricultural insecticide products),

- n = Total number of pesticide product types classified under a pesticide product category. Product type means the use and the pest for which the pesticide is manufactured and/or reformulated.
- i = Subscript denoting a specific pesticide product type. Product type means the use and the pest for which the pesticide is manufactured and/or reformulated.
- m = Total number of product forms used to apply each pesticide product type from containers (e.g., liquid).
- j = Subscript denoting a specific type of product form (e.g., liquid).
- VOC_{ij} = The average VOC content (excluding the weight of the container and applicator) for all container sizes within a specific pesticide product type (n) and product form (j) in units of grams VOC/liter (lbs VOC/gal) of product (e.g., the average weight of VOC per unit volume of liquid insecticide for all container sizes), and
- V_i = Total volume of product for all container sizes within a specific pesticide product type (n) and product form (j) in units of liters (gal) (e.g., the sum of the volume of all liquid insecticides sold, supplied, offered for sale, or distributed in the applicable area specified in paragraph (b)(8)(ii)(A) of this section).

(B) Beginning January 1, 1996, each registrant or consortium of registrants shall limit the total VOC mass of each pesticide category specified in paragraph (b)(8)(iii)(A)(4) of this section to the level calculated by the following equation.

$$R_N = R_0 - R_0 [(N - 1995) (0.06)]$$

where

R_N = Total allowable VOC mass contained in all pesticide products classified under a pesticide product category during calendar year "N" in units of kg (lbs) per year.

R_0 = Total baseline VOC mass contained in all pesticide products classified under a pesticide product category for the base year 1990 in units of kg (lbs) per year.

N = Current calendar year. N shall remain equal to 2010 subsequent to the calendar year 2010.

(iv) *Reporting.* Each registrant or consortium of registrants subject to the limitations of paragraph (b)(8)(iii)(B) of this section shall submit to the Administrator by March 1 of each calendar year, beginning in 1997, a certification of compliance with this rule for the previous calendar year. The certification shall include all of the information specified in paragraphs (b)(8)(iv) (A) through (F) of this section.

(A) A declaration that each person is in compliance with paragraph (b)(8)(iii)(B) of this section.

(B) Documentation of methods used to achieve the VOC reductions required in paragraph (b)(8)(iii)(B) of this section for each pesticide product category. Such methods shall include either limiting the

VOC content of individual types of pesticide products and/or limiting the quantity of pesticide products sold, supplied, offered for sale, or distributed within the applicable area specified in paragraph (b)(8)(ii)(A) of this section.

(C) Test or demonstration methods used to demonstrate achievement of the VOC reductions required in paragraph (b)(8)(iii)(B) of this section.

(D) Projections of total VOC mass for each pesticide product category for the next five-year period after the application of the reduction methods described in paragraph (b)(8)(iv)(B) of this section.

(E) The documentation required in paragraphs (b)(8)(iv) (B), (C), and (D) of this section shall be submitted to the Administrator in a format equivalent to Table 1 of this rule.

(v) *Recordkeeping.* Each registrant or consortium of registrants subject to the limitations of paragraph (b)(8)(iii)(B) of this section shall collect and record all information necessary to demonstrate compliance with paragraphs (b)(8)(iii)(A), and (iii)(B) and (iv) of this section for each calendar year beginning in 1996 and ending with 2010 and maintain the information at each facility for a period of three years.

(vi) *Test methods.* (A) The Administrator may require, at any time, any registrant or consortium of registrants subject to the limitations of paragraph (b)(8)(iii)(B) of this section to perform tests to demonstrate compliance with the limitations of paragraph (b)(8)(iii)(B) of this section. Such tests shall be performed to determine the VOC content of the pesticide product formulation before packaging or performed to determine the VOC content of the product formulation after dilution if the product is packaged as a concentrate and diluted with one or more solvents containing VOCs before application. The results of tests conducted by a registrant to determine the VOC content of the pesticide product shall be subject to verification by the Administrator. In determining compliance with the requirements of this rule, the results of tests conducted by the Administrator to determine the VOC content of pesticide products shall take precedence over the results of tests conducted by others to determine that VOC content.

(B) Testing to determine the VOC content of a pesticide product, or to determine compliance with the requirements of this rule, shall be performed using one or more of the following methods or any other test methods approved by the Administrator. (1) Method 24 or 24A, part 60, title 40,

Code of Federal Regulations, appendix A, July 1, 1988; (2) Method 18, Federal Register 48, No. 202, October 18, 1983; (3) Method 1400, NIOSH Manual of Analytical Methods, Volume 1, February 1984; or (4) U.S. EPA Method 8240 GC/MS Method for Volatile Organics, September 1986.

(9) *Livestock Waste Management Operations—(i) Definitions.* (A) For the purpose of this rule, the general definitions in paragraph (a)(3) of this section apply.

(B) For the purpose of this rule, the following definitions also apply:

Livestock means dairy and beef cattle, horses, swine, sheep, and poultry.

Livestock management operation means any facility where livestock is managed to produce meat, milk, eggs, or breeding stock or any facility where horses are stabled.

Livestock waste means livestock excrement including liquid wastes, fecal material, and decomposing manure.

Livestock waste management operation means any facility where livestock waste is collected, stored, treated, or disposed of.

(ii) *Applicability.* The requirements of paragraph (b)(9) (iii), (iv), (v), and (vi) of this section shall apply to any owner or operator of any livestock management or livestock waste management operation located in the South Coast Air Basin.

(iii) *Specific provisions.* (A) Each owner or operator of a livestock management or livestock waste management operation shall submit a VOC emissions reduction compliance plan to the Administrator by January 1, 1993. The plan shall be prepared for the years 1996 through 2000 and shall include all of the information specified in paragraphs (b)(4)(iii)(A) (1) through (5) of this section. Each owner or operator shall submit a revised plan to the Administrator within 30 calendar days of receipt of comments from the Administrator. Each owner or operator shall comply at all times with the provisions of the most recent plan submitted to the Administrator.

(1) The name, title, address, and telephone number of the owner or operator of the facility, and of each person responsible for preparing the information required under paragraph (b)(a)(iii)(A)(2) of this section.

(2) Baseline VOC emissions shall be calculated for each facility. Baseline emissions for each facility shall equal the sum of VOC emissions from all emissions sources at the facility including emissions associated with the use of architectural coatings and clean-up solvents. Baseline emissions shall be

determined using the actual number of live-stock for each livestock management operation. Baseline emissions shall be calculated for each livestock management operation in accordance with one of the procedures specified in paragraph (b)(a)(iii)(A)(2) (i) or (ii) of this section.

(i) If daily livestock records are available for the calendar years 1986 and 1987, baseline emissions shall be calculated by multiplying the median value of animals for each livestock category times an emission factor for the livestock category. Baseline emissions would equal the sum of the emissions from all the livestock categories.

(ii) If daily livestock records are not available for the calendar years 1986 and 1987, baseline emissions shall be based on the average per day number for each livestock category for the two-year period. Baseline emissions shall be calculated by multiplying the average per day number of livestock for each livestock category times an emission factor for the livestock category. Baseline emissions would equal the sum of the emissions from all the livestock categories.

(3) Methods to be employed by the owner or operator to limit VOC emissions from emissions sources to within the emissions level required in paragraph (b)(a)(iii)(B). Methods may include but are not limited to:

(i) Enhancing anaerobic conditions in feed yards, runoff ponds, and manure stock-piles;

(ii) Installation of anaerobic digestion systems at livestock management operations;

(iii) Increasing the frequency of waste collection and disposal;

(iv) Total enclosure of livestock management or livestock waste management operations with ventilation to a control device; and

(v) Decreasing the number of livestock at livestock management operations.

(4) Test or demonstration methods used to demonstrate achievement of the VOC emissions reductions required in paragraph (b)(a)(iii)(B) of this section. The methods may include but are not limited to:

(i) The test methods and procedures specified in paragraph (a)(4) of this section,

(ii) Data and engineering calculations documenting process modifications that were made to reduce VOC emissions, and

(iii) Operating schedules for baseline emissions levels and for emissions levels starting January 1, 1996, continuing for a period not less than 15 years, for those facilities choosing to

comply through use of reduced operating schedules.

(5) Projections of annual VOC emissions for each emissions source through the year 2010 after application of the reduction methods described in paragraph (b)(a)(iii)(A)(3) of this section.

(B) Beginning January 1, 1996, each owner or operator of a facility which is subject to the limitations of this paragraph because of paragraph (b)(a)(ii) of this section shall limit total VOC emissions from the subject facility to the level calculated by the following equation:

$$R_N < \sum_{i=1}^n R_{oi} - \sum_{i=1}^n R_{oi} [(N-1995) (0.06)]$$

where

R_N = Allowable VOC emissions during calendar year "N" for all emissions sources at the facility in units of kg (lbs) per day,

R_{oi} = Baseline VOC emissions in units of kg (lbs) per day for each livestock category at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(h)(iii)(A)(2) of this section,

N = Current calendar year. N will remain equal to 2010 subsequent to the calendar year 2010,

i = Subscript denoting a specific emissions source, and

n = Total number of emissions sources at the facility.

(iv) *Reporting.* Each owner or operator of a facility which is subject to the limitations of paragraph (b)(9)(iii)(B) of this section because of paragraph (b)(9)(ii) of this section shall submit to the Administrator by March 1 of each calendar year, beginning in 1997, a certification of compliance with this rule for the previous calendar year. This certification shall include:

(A) A declaration that the facility is in compliance with all of the requirements of this rule, and

(B) Documentation of methods used to achieve the VOC emissions reductions required in paragraph (b)(9)(iii)(B) of this section. The documentation must be presented in a format equivalent to Table 1 [see § 52.264 (b)(1) Table 1].

(v) *Recordkeeping.* Each owner or operator of a facility which is subject to the limitations of paragraph (b)(9)(iii)(B) of this section because of paragraph (b)(9)(ii) of this section shall collect and record all information necessary to demonstrate compliance with the limitations of paragraph (b)(9)(iii)(B) of this section for each emissions source and maintain the information at the facility for a period of three years. The information shall be collected and

recorded each day of each calendar year beginning in 1996 and ending with 2010.

(vi) *Testing and monitoring.* The Administrator may require, at any time, any owner or operator of a facility subject to the limitations of paragraph (b)(9)(iii)(B) of this section because of paragraph (b)(9)(ii) of this section to perform tests using the applicable test methods and procedures specified in paragraph (a)(4) of this section and/or to install monitoring equipment specified in paragraph (a)(4)(iv)(B) of this section to demonstrate compliance with the limitations of paragraph (b)(a)(iii)(B) of this section.

(10) *Architectural Coatings.*—(i) *Definitions.* (A) For the purpose of this rule, the general definitions in paragraph (a)(3) of this section apply.

(B) For the purpose of this rule, the following definitions also apply:

Architectural coating means any nonaerosol coating applied to stationary structures and their appurtenances including, but not limited to, commercial, industrial, or institutional buildings, pavements, curbs, and stationary and mobile homes. This definition does not include aerosol paint and finish products which are subject to the consumer products rule.

Consortium means a partnership, an agreement between, or an association of two or more persons.

Distribute means to sell, supply, or offer for sale any architectural coating to any person in the applicable area specified in paragraph (b)(10)(ii)(A) of this section.

Distribution facility means any facility from which a distributor obtains an architectural coating which will be sold, supplied, offered for sale, used, or distributed in the applicable area specified in paragraph (b)(10)(ii)(A) of this section.

Distributor means any person who transports or stores or causes the transportation or storage of any architectural coating at any point between any architectural coating manufacturing or reformulating facility and any person.

Manufacture means to produce or combine any ingredients to produce any architectural coating for packaging or distribution.

Manufacturing facility means any facility where any ingredients are produced or combined to produce any architectural coating for packaging or distribution.

Package means to fill or refill any container with any architectural coating which will be sold, supplied, offered for sale, or distributed in the applicable area specified in paragraph (ii) (A) of this rule.

Packaging facility means any facility where any container is filled or refilled with any architectural coating which will be sold, supplied, offered for sale, or distributed in the applicable area specified in paragraph (b)(10)(ii)(A) of this section.

Reformulate means to combine, mix, or blend any ingredients to produce any architectural coating for packaging or distribution.

Reformulating facility means any facility where any ingredients are combined, mixed, or blended to produce any architectural coating for packaging or distribution.

Retailer means any person who owns, leases, operates, controls, or supervises a retail outlet.

Retail outlet means any establishment at which architectural coatings are sold, offered for sale, or otherwise distributed directly to consumers.

Wholesale purchaser-consumer means the owner or operator of any business that is an ultimate consumer of any architectural coating and which obtains any architectural coating from a distributor for use in the applicable area specified in paragraph (b)(10)(ii)(A) of this section.

(ii) **Applicability.** (A) The requirements of paragraphs (b)(10)(iii)(A), (iii)(B), (v)(A), (iv) and (vi) of this section shall apply to any person who manufactures and/or reformulates any architectural coating which is sold, supplied, offered for sale, or distributed in the South Coast Air Basin and coastal waters within three miles of Orange and Los Angeles Counties on and after January 1, 1996.

(B) The requirements of paragraphs (b)(10)(iii)(C), (iii)(D), and (v)(B) of this section shall apply to any person who distributes any architectural coating which is sold, supplied, offered for sale, or distributed in the applicable area specified in paragraph (b)(10)(ii)(A) of this section on and after January 1, 1996.

(C) The requirements of paragraphs (b)(10)(iii)(C), (iii)(D), and (v)(C) of this section shall apply to any person who packages any architectural coating which is sold, supplied, offered for sale, or distributed in the applicable area specified in paragraph (b)(10)(ii)(A) of this section on and after January 1, 1996.

(D) The requirements of paragraph (b)(10)(v)(D) of this section shall apply to any retailer and any wholesale purchaser-consumer who sells, supplies, offers for sale, or uses any architectural coating in the applicable area specified in paragraph (b)(10)(ii)(A) of this section on and after January 1, 1996.

(E) The requirements of paragraphs (b)(10)(iii), (iv), (v), and (vi) of this section shall not apply to any person

located in the applicable area specified in paragraph (ii)(A) who manufactures, reformulates, packages, or distributes any architectural coating which is sold, supplied, offered for sale, or distributed outside of the applicable area specified in paragraph (b)(10)(ii)(A) of this section.

(iii) **Specific Provisions.** (A) Each person, or each consortium of persons, who manufactures and/or reformulates any architectural coating shall register with the Administrator as a registered manufacturer or reformulator by submitting all of the information specified in paragraphs (b)(10)(iii)(A) (1) through (4) of this section to the Administrator by January 1, 1993. Upon request by the Administrator, each person or each consortium of persons shall submit any additional information necessary to fulfill the registration requirements within 30 calendar days of receipt of the request.

(1) The name, title, address, and telephone number of the owner or operator of each facility where architectural coatings will be manufactured and/or reformulated.

(2) The name, title, address, and telephone number of each person responsible for preparing the information required under paragraphs (b)(10)(iii)(A) (3) and (4) of this section.

(3) The name, address, and telephone number of each facility where architectural coatings will be manufactured and/or reformulated. The information required under paragraph (b)(10)(iii)(A)(4) of this section shall be prepared and submitted to the Administrator for each facility and the total for all facilities identified under this paragraph.

(4) The baseline VOC mass for 1988 (R_0) shall be calculated for architectural coatings in units of kg (lbs) per year. The data and calculations used to calculate the baseline VOC mass shall be submitted to the Administrator. The baseline VOC mass shall be calculated on a weight-weight basis by using the equation specified in paragraph (b)(10)(iii)(A)(4)(i) of this section or on a weight-volume basis by using the equation specified in paragraph (b)(10)(iii)(A)(4)(ii) of this section.

(i) Calculation of baseline VOC mass on a weight-weight basis.

$$R_0 = \sum_{i=1}^n (VOC_{w_i})(W_i)$$

where

R_0 = Total baseline VOC mass contained in all architectural coatings for the base year 1988 in units of kg (lbs) per year,

n = Total number of architectural coating types,

i = Subscript denoting a specific architectural coating type,

VOC_{w_i} = The average VOC content after recommended thinning (excluding the weight of the container) for all container sizes within a specific architectural coating type (n) in units of fraction by weight (e.g., the average weight of VOC per unit weight of house paint for all container sizes), and

W_i = Total weight of coating (excluding the weight of the container) for all container sizes within a specific architectural coating type (n) in units of kg (lbs) (e.g., the sum of the weight of all house paints sold, supplied, offered for sale, or distributed in the applicable area specified in paragraph (ii)(A)).

(ii) Calculation of baseline VOC mass on a weight-volume basis

$$R_0 = \sum_{i=1}^n (VOC_{v_i})(V_i)$$

where

R_0 = Total baseline VOC mass contained in all architectural coatings for the base year 1988 in units of kg (lbs) per year,

n = Total number of architectural coating types,

i = Subscript denoting a specific architectural coating type,

VOC_{v_i} = The average VOC content after recommended thinning (excluding the weight of the container, water, and compounds which are exempt from the definition of VOC) for all container sizes within a specific architectural coating type (n) in units of grams VOC/liter (lbs VOC/gal) of coating (e.g., the average weight of VOC per unit volume of house paint for all container sizes), and

V_i = Total volume of product for all container sizes within a specific architectural coating type (n) in units of liters (gal) (e.g., the sum of the volume of all house paints sold, supplied, offered for sale, or distributed in the applicable area specified in paragraph (b)(10)(ii)(A) of this section).

(B) Beginning January 1, 1996, each person, or each consortium of persons, who manufactures and/or reformulates architectural coatings shall limit the total VOC mass of architectural coatings to the level calculated by the following equation.

$$R_N = R_0 - R_0[N - 1995](0.06)]$$

where

R_N = Total allowable VOC mass contained in all architectural coatings during calendar year "N" in units of kg (lbs) per year,

R_0 = Total baseline VOC mass contained in all architectural coatings for the base year 1987 in units of kg (lbs) per year as determined using either paragraph (b)(10)(iii)(A)(4)(i) or (iii)(A)(4)(ii) of this section.

N=Current calendar year. N shall remain equal to 2010 subsequent to the calendar year 2010.

(C) Each person who packages or distributes any architectural coating shall register with the Administrator as a registered packager or distributor by submitting all of the information specified in paragraphs (b)(10)(iii)(C) (1) and (2) of this section to the Administrator by January 1, 1994. Upon request by the Administrator, each person shall submit any additional information necessary to fulfill the registration requirements within 30 calendar days of receipt of the request.

(1) The name, title, address, and telephone number of each person responsible for distributing architectural coatings, and

(2) The name, address, and telephone number of each packaging or distribution facility.

(D) No person shall package or distribute any architectural coating which will be sold, supplied, offered for sale, or distributed in the applicable area specified in paragraph (b)(10)(ii)(A) of this section on and after January 1, 1996, unless such person complies with all of the following requirements.

(1) The architectural coating is obtained from a person, or a consortium of persons, registered with Administrator to manufacture and/or reformulate the architectural coating for use in the applicable area specified in paragraph (b)(10)(ii)(A) of this section.

(2) The following labeling requirements shall apply to each architectural coating subject to the limitations of paragraph (b)(10)(iii)(B) of this section. Any architectural coating registered under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136, et seq., shall be exempt from the labeling requirements of this section.

(i) A label shall be affixed to each container which displays the date on which the container was filled, the VOC content of the product in units of percent by weight, and a declaration that the architectural coating was manufactured, reformulated, packaged, and/or distributed in accordance with the requirements of this rule.

(ii) If a bar code or any other closed-code dating system is used to indicate the date on which the container is filled, an explanation of the code must be filed with the Administrator by the date on which the product bearing the code will be sold, supplied, offered for sale, or distributed in the applicable area specified in paragraph (b)(10)(ii)(A) of this section.

(iv) *Reporting.* Each person, or each consortium of persons, who manufactures and/or reformulates any

architectural coating subject to the limitations of paragraph (b)(10)(iii)(B) of this section shall submit to the Administrator by March 1 of each calendar year, beginning in 1997, a certification of compliance with this rule for the previous calendar year. The certification shall include all of the information specified in paragraphs (b)(10)(iv) (A) through (F) of this section.

(A) A declaration that each person is in compliance with paragraph (b)(10)(iii)(B) of this section.

(B) Documentation of methods used to achieve the VOC reductions required in paragraph (b)(10)(iii)(B) of this section for each architectural coating category. Such methods shall include either limiting the VOC content of individual types of architectural coatings and/or limiting the quantity of architectural coatings sold, supplied, offered for sale, or distributed within the applicable area specified in paragraph (b)(10)(ii)(A) of this section.

(C) Test or demonstration methods used to demonstrate achievement of the VOC reductions required in paragraph (b)(10)(iii)(B) of this section.

(D) Projections of total VOC mass of architectural coatings for the next five-year period after the application of the reduction methods described in paragraph (b)(10)(iv)(B) of this section.

(E) The documentation required in paragraphs (b)(10)(iv) (B), (C), and (D) of this section shall be submitted to the Administrator in a format equivalent to Table 1 (see § 52.264 (b)(1) Table 1).

(F) The name, address, and telephone number of each facility to which each manufacturing and/or reformulating facility initially sent each architectural coating for packaging and/or distribution during the previous calendar year.

(v) *Recordkeeping.* (A) Each person, or each consortium of persons, who manufactures and/or reformulates any architectural coating subject to the limitations of paragraph (b)(10)(iii)(B) of this section shall collect and record all information necessary to demonstrate compliance with paragraphs (b)(10)(iii)(A), (iii)(B) and (iv) of this section for each calendar year beginning in 1996 and ending with 2010 and maintain the information at each facility for a period of three years.

(B) Each person who distributes any architectural coating subject to the limitations of paragraph (b)(10)(iii)(B) of this section shall collect and record all information necessary to demonstrate compliance with paragraphs (b)(10)(iii)(C) and (iii)(D) of this section for each calendar year beginning in 1996 and ending with 2010 and maintain the information at each facility for a period

of three years. The information shall include but not be limited to the following:

(1) A copy of registration forms and any records (e.g., purchase order forms) necessary to document that each architectural coating was obtained from a manufacturer or reformulator registered with the Administrator, and

(2) The name and address of each retailer or wholesale purchaser-consumer to which each architectural coating is initially distributed.

(C) Each person who packages any architectural coating subject to the limitations of paragraph (b)(10)(iii)(B) of this section shall collect and record all information necessary to demonstrate compliance with paragraphs (b)(10)(iii)(C) and (iii)(D) of this section for each calendar year beginning in 1996 and ending with 2010 and maintain the information at each facility for a period of three years. The information shall include but not be limited to a copy of registration forms and any records (e.g., purchase order forms) necessary to document that each architectural coating formulation is obtained from a manufacturer or reformulator registered with the Administrator.

(D) Each retailer and each wholesale purchaser-consumer who sells, supplies, offers for sale, or uses any architectural coating in the applicable area specified in paragraph (b)(10)(ii)(A) of this section on and after January 1, 1996, shall collect and record all information necessary to demonstrate that each architectural coating was obtained from a packaging or distribution facility which is registered with the Administrator to package or distribute architectural coatings in the applicable area specified in paragraph (b)(10)(ii)(A) of this section. The information shall include, but not be limited to, a copy of registration forms and any records (e.g., purchase order forms) necessary to document that each architectural coating is obtained from a packaging or distribution facility registered with the Administrator. The information shall be collected and recorded for each calendar year beginning in 1996 and ending with 2010 and maintained at each facility for a period of three years.

(vi) *Test methods.* The Administrator may require, at any time, any person who manufactures and/or reformulates any architectural coating subject to the limitations of paragraph (b)(10)(iii)(B) of this section to perform tests to demonstrate compliance with the limitations of paragraph (b)(10)(iii)(B) of this section. Such tests shall be performed to determine the VOC content of the architectural coating

formulation by using the applicable test methods and procedures specified in paragraph (a)(4)(i) of this section. The results of tests conducted by any person who manufactures and/or reformulates an architectural coating to determine the VOC content of the architectural coating shall be subject to verification by the Administrator. In determining compliance with the requirements of this rule, the results of tests conducted by the Administrator to determine the VOC content of architectural coatings shall take precedence over the results of tests conducted by others to determine that VOC content.

(c) Incorporated by Reference. The materials listed below are incorporated by reference in the corresponding sections noted. The incorporation by reference was approved by the Director of the Office of Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of approval, and a notice of any change in these materials will be published in the *Federal Register*. The materials are available from the sources listed below.

(1) The following material is available for purchase from the American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, Pennsylvania, 19103.

(i) ASTM D1475-85, Standard Test Method for Density of Paint, Varnish, Lacquer, and Related Products, for § 52.264(a)(4)(i)(B)(3)(i).

(ii) ASTM D2369-87, Standard Test Method for Volatile Content of Coatings, for § 52.264(a)(4)(i)(B)(3)(ii).

(iii) ASTM D3792-86, Standard Test Method for Water Content of Water-Reducible Paints by Direct Injection into a Gas Chromatograph, for § 52.264(a)(4)(i)(B)(3)(iii).

(iv) ASTM D4017-81 (Reapproved 1987), Standard Test Method for Water in Paints and Paint Materials by Karl Fischer Method, for § 52.264(a)(4)(i)(B)(3)(iv).

(v) ASTM D4457-85, Standard Test Method for Determination of Dichloromethane and 1,1,1-Trichloroethane in Paints and Coatings by Direct Injection into a Gas Chromatograph, for § 52.264(a)(4)(i)(B)(3)(v).

(vi) ASTM D2697-86, Standard Test Method for Volume Nonvolatile Matter in Clear or Pigmented Coatings, for § 52.264(a)(4)(i)(B)(3)(vi).

(vii) ASTM D3980-87, Standard Practice for Interlaboratory Testing of Paint and Related Materials, for § 52.264(a)(4)(i)(B)(3)(vii).

(viii) ASTM E180-85, Standard Practice for Determining the Precision of ASTM Methods for Analysis and Testing of Industrial Chemicals, for § 52.264(a)(4)(i)(B)(3)(viii).

(ix) ASTM D2372-85, Standard Method of Separation of Vehicle from Solvent-Reducible Paints, for § 52.264(a)(4)(i)(B)(3)(ix).

(x) ASTM D2879-86, Standard Test Method for Vapor Pressure-Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope, for § 52.264(a)(4)(ix), (x) and (xi).

(xi) ASTM D3925-81 (Reapproved 1985), Standard Practice for Sampling Liquid Paints and Related Pigment Coatings, for § 52.264(a)(4)(i)(A)(1).

(xii) ASTM E300-86, Standard Practice for Sampling Industrial Chemicals, for § 52.264(a)(4)(i)(A)(2).

(2) The Standard Industrial Classification Manual, 1987, for § 52.264(a)(3) is available for purchase from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC, 20402.

(d) *Stationary and area source* **committal rule**—(1) *Categories to be controlled*. For the purpose of this rule, the following categories of emissions or emissions sources described below shall define the controllable categories. The applicable area of control is the South Coast Air Basin and coastal waters within three miles of Los Angeles and Orange Counties.

(i) *Industrial and commercial solvent use*. Rules shall apply to any distributor or commercial user of industrial solvent or industrial/commercial coatings. The emissions source category includes several subcategories as follows:

- (A) Petroleum and perchloroethylene dry cleaning
- (B) Metal cleaning and degreasing
- (C) Surface coating and solvent operations (architectural, automobile assembly and refinishing, marine vessels, aerospace assembly, wood furniture, miscellaneous wood products, wood flatstock, and other industrial surfaces)
- (D) Graphic art/printing
- (F) Architectural coatings

(ii) *Manufacture of products containing VOCs*. This category includes facilities that manufacture, fabricate or blend chemicals, pharmaceuticals, or rubber products within

(iii) *Disposal of materials containing VOCs*. This emissions category includes disposal of biodegradable solid waste emissions from sanitary landfills and waste solvent processed at publicly owned treatment works.

(iv) *Food preparation*. This emissions category would include seven subcategories as follows:

- (A) Bakery products
- (B) Food and kindred products
- (C) Wine and brandy making
- (D) Fruit and vegetable preservation
- (E) Grain mill products
- (F) Vegetable oil production

(v) *Petroleum and Natural Gas Extraction, Processing and Storage*. This emissions category includes eight subcategories as follows:

- (A) Oil and gas extraction
- (B) Liquid gas production
- (C) Petroleum refining
- (D) Petroleum coke production

(E) Petroleum and gasoline marketing (bulk plants and terminal, storage tanks and terminals, marine vessel operations, gasoline fueling of boats, tank trucks, service stations)

(F) Pipe lines (equipment related-heaters)

(G) Offshore oil production

(vi) *Consumer products*. This category includes the following subcategories:

- (A) Animal products
- (B) Automotive and Industrial products (windshield washer fluid, windshield spray deicer)
- (C) Consumer pesticide products
- (D) Food products
- (E) Household products (deodorants, cleaners, polishes)
- (F) Paints and finish products
- (G) Personal Care Products (hair sprays, shampoos)
- (H) Other products not classified under A(1) [a-g]

(vii) *Pesticide products*. This rule would apply to the following agricultural and non-agricultural pesticide product categories:

- (A) Disinfectants
- (B) Fungicides
- (C) Herbicides
- (D) Insecticides
- (E) Rodenticides
- (F) Other pesticide products

(viii) *Livestock waste operations*. These rules would include control of emissions from livestock waste from the following categories:

- (A) Open range operations
- (B) Open facilities
- (C) Open confinement facilities
- (D) Total confinement facilities

(2) *Provisions*. EPA commits to publish rules to control VOC emissions from the sources described in (a) on the schedule in (c) below.

(3) *Promulgation schedule*. Rules shall be promulgated and become effective according to the schedule given below:

EPA rule reduction		Cumulative percent from category	
Promulgation date	Effective date		
1/1/95.....	1/1/96	1996-2000	30%
1/1/2000.....	1/1/2001	2001-2005	60%
1/1/2005.....	1/1/2006	2006-2010	90%

10. 40 CFR Part 52 is proposed to be amended by adding new § 52.265 to read as follows:

§ 52.265 Other off-highway mobile sources.

(a) *Actual rule*. (1) *Applicability of 40 CFR part 86*. For the purposes of this Section, except as otherwise provided, the definitions and requirements of 40 CFR part 86 (Control of Air Pollution

From New Motor Vehicles and New Motor Vehicle Engines: Certification and Test Procedures) apply unless waived by the Administrator.

(2) *Prohibition.* (i) After January 1, 1997¹ no person shall sell, offer for sale, introduce or deliver for introduction into commerce within the South Coast Air Basin (SCAB) or to a resident of the SCAB or to a business located in the SCAB a new (or newly converted from an on-highway vehicle) off-highway vessel, vehicle, mobile utility equipment item, or lawn and garden unit powered by a gasoline, LPG, or diesel engine unless the engine is covered by a certificate of conformity issued by the Administrator indicating that the engine conforms with the applicable standards of paragraph (a)(3) of this section or unless the vessel, vehicle, item, or unit is exempt under paragraph (a)(4) of this section.

(ii) No person shall remove or render inoperative an emission control device or element of design of any off-highway mobile unit subject to this section.

(3) *Standards.* (i) For off-highway motorcycles, buggies, and other highway vehicle derivatives, the applicable standards are the composite VOC and CO standards specified in 40 CFR 52.260 (Ultra Clean Motor Vehicle Backstop Program).

(ii) For gasoline-fueled, LPG-fueled, and diesel-fueled engines not covered by paragraph (a)(3)(i) of this section with rated power output equal to or greater than 40 horsepower, the applicable standards (in grams per brake-horsepower-hour) are the hydrocarbon, carbon monoxide, particulate, and oxides of nitrogen standards specified in 40 CFR part 86 for 1997 and newer model year heavy-duty engines intended for use in vehicles less than 14,001 pounds GVWR. LPG engines shall meet the gasoline engine standards. The Administrator may approve comparably stringent standards defined on the basis of other test cycles and procedures more appropriate to the intended application of the engine.

(iii) For gasoline-fueled and LPG-fueled engines not covered by paragraph (a)(3)(i) of this section with rated power output less than 40 horsepower intended for use in non-carried equipment, the applicable VOC and CO standards are a VOC value equal to 0.10 times the VOC emission level and a CO value equal to 0.10 times the CO emission level of a comparable 1990 model gasoline or LPG engine respectively, on a test cycle approved by the Administrator as appropriate for the intended application.

(iv) For diesel-fueled engines, the applicable VOC standard is a VOC value equal to .50 times the VOC emission level of a comparable 1990 model diesel engine on a test cycle approved by the Administrator as appropriate to the intended application.

(v) For gasoline-fueled engines in carried equipment, the applicable standards are VOC and CO values equal to 0.2 times the VOC and CO emission level of a comparable 1990 model gasoline engine on a test cycle approved by the Administrator as appropriate for the intended application.

(4) *Exemptions.* This section does not apply to public safety and emergency response vessels, vehicles, or equipment, farm equipment intended only for use in commercial farming, or ships, locomotives, or aircraft.

(5) *Restrictions on operation of non-complying vessels, vehicles and equipment after January 1, 2004.* [Reserved]

(6) *Restrictions on operation of non-complying vessel, vehicles, and equipment after January 1, 2010.* [Reserved]

(b) *Committal Rule—(1) Categories to be controlled:*

(i) Marine vessels not subject to 40 CFR 52.262.

(ii) Pleasure boats.

(iii) Off-highway vehicles.

(iv) Mobile utility equipment.

(v) Lawn and garden equipment.

(2) *Provisions.* EPA commits to publish rules to control VOC and CO emissions from the sources described in paragraph (b)(1) of this section on the schedule described in paragraph (b)(3) of this section. The control area is the South Coast Air Basin and coastal waters within three miles of Los Angeles and Orange Counties.

(3) *Promulgation Schedule and Emission Limit.* Rules will be published by January 1, 1995 which will result in a CO reduction of 53 percent from 1987 levels in 2004 and thereafter and a VOC reduction of 75 percent from 1987 levels in 2010 and thereafter. (In the alternative of a CO attainment date of 2000 rather than 2004, the CO reduction commitment in the final version of this section will be 23 percent in 2000 and thereafter.) The effective dates of the rules will fall between January 1, 1997 and January 1, 2002.

11. 40 CFR part 52 is proposed to be amended by adding new § 52.268 to read as follows:

§ 52.266 No drive day program.

(a) *Prohibited Act.* No motor vehicle registered in the South Coast Air Basin (SCAB) shall be operated on any public roadway within the SCAB according to

the following driving schedule, based on the last character (letter and number) of the license plate, during the period November 1, 2000, to March 1, 2001, and each period of November 1 to March 1 thereafter through March 1, 2004.

NO DRIVE DAY SCHEDULE

(Based on Last Alpha Numeric Character of License Plate)

Mon-day	Tues-day	Wednes-day	Thurs-day	Friday
0	2	4	6	8
1	3	5	7	9
O	Z	H	G	U
I	C	J	P	V
Q	D	K	R	W
A	E	L	S	X
B	F	M	T	Y

(b) *Exemptions.* (1) Public safety vehicles (police, fire, ambulance, etc.). [Reserved]

(2) Public mass transit vehicles. [Reserved]

(3) High occupancy vehicles. [Reserved]

(4) Special Use Vehicles. [Reserved]

(5) Procedures for obtaining other exemptions. [Reserved]

(c) *Penalties.* [Reserved]

12. 40 CFR part 52 is proposed to be amended by adding new § 52.268 to read as follows:

§ 52.268 Commitment to promulgate additional VOC rules.

The Administrator shall promulgate and implement a program by January 1, 2005, to be effective no later than January 1, 2010, to reduce the level of actual summertime VOC emissions in the South Coast Air Basin by 70 tons per day, or such smaller amount as is necessary according to the most recent projections of actual VOC emissions levels, in order to ensure that the level of actual summertime emissions of VOC in the SCAB will not exceed 200 tons per day in the year 2010. EPA shall assess every three years how far growth has deviated from projections used in the FIP, and shall modify the commitment to reflect the appropriate level of emissions to be reduced in the program described above.

13. 40 CFR part 52 is proposed to be amended by adding new § 52.282 to read as follows:

§ 52.282 Control measure for reducing VOC emissions from marine tank vessel loading and unloading operations

(a) *Applicability.* (1) The affected facilities to which this subpart applies are marine vessels and bulk terminals that conduct the loading or unloading of

¹ 1997 is the earliest date EPA is considering. Comment is requested on dates as late as 2002.

liquid from or into marine vessels within the area defined as the South Coast Air Basin and adjacent coastal waters.

(2) Any affected facility under paragraph (a)(1) of this section for which loading events do not exceed 159 cubic meters (1000 bbls), is exempt from requirements of this subpart, except for the recordkeeping and reporting requirements in (f)(1) of this section.

(3) Any affected facility under paragraph (a)(1) of this section is exempt if true vapor pressure of the liquid transferred, or in the case of ballasting into non-segregated ballast tanks or purging of the vapor space, the liquid in the tank prior to ballasting or unloading, is 77.5 mm Hg (1.5 psia), or less.

(4) The owner or operator of an affected facility, as defined in paragraph (a)(1) of this section shall be in compliance with the provisions of this subpart on and after January 1, 1994.

(b) *Definitions.* As used in this section, all terms defined herein shall have the following meaning.

Adjacent coastal waters means the waters within three miles of Los Angeles or Orange County.

Bulk terminal means any facility which receives organic liquids from a marine vessel or loads organic liquids into marine vessel tanks.

Car-sealed means having a seal that is placed on the device used to change the position of a valve (e.g. from open to closed) such that the position of the valve cannot be changed without breaking the seal and requiring the replacement of the old seal, once broken, with a new seal.

Control device means all equipment used for recovering or oxidizing volatile organic compounds displaced or otherwise vented from loading or unloading activity, ballasting into non-segregated ballast tanks, and housekeeping operations.

Incinerator means any enclosed combustion device that is used for destroying organic compounds and that does not extract energy in the form of steam or process heat. These devices do not rely on the heating value of the waste gas to sustain efficient combustion. Auxiliary fuel is burned in the device and the heat from the fuel flame heats the waste gas to combustion temperature. Temperature is controlled by controlling combustion air or fuel.

Leak means any instrument reading of 10,000 ppmv or greater as methane using Method 21 of 40 CFR part 60, appendix A.

Loading event means an incident or occurrence beginning with the connecting of bulk terminal storage tanks to a marine vessel, or the

connecting together of two marine vessels, by means of pipes and hoses, the transfer of liquid cargo, and ending with the disconnecting of the pipes and hoses. Loading and unloading, ballasting into non-segregated ballast tanks, and housekeeping operations are all considered loading events. In addition, emissions resulting from venting of precursor organic compounds within the South Coast Air Basin or adjacent waters prior to or after a loading event are included in that loading event.

Loading rack means the loading arms, pumps, meters, shutoff valves, relief valves, and other piping and valves necessary to fill marine vessels.

Marine vessel means any tank ship or tank barge which transports liquid bulk cargo in tanks.

Nonvapor-tight means any tank or marine vessel that does not pass the required vapor-tightness test.

Organic Liquid means for the purpose of this rule, organic liquid hydrocarbons with true vapor pressure in excess of 77.5 mmHg (1.5 psia), such as all gasoline, gasoline blending stocks, aviation gas and aviation fuel (JP-4 type) and crude oil.

Process heater means a device that transfers heat liberated by the burning of fuel to fluids contained in tubes, except water that is heated to produce steam.

Repair means the work performed on a vessel to eliminate liquid and vapor leaks from the vessel tanks and the liquid and vapor transfer equipment.

Steam generating unit means any enclosed combustion device that uses fuel energy to produce steam.

Vapor balance system means a system whereby vapors displaced from a tank being loaded are simultaneously vented to the tank being unloaded. This system is applicable only to fixed roof tanks, and can occur between two marine vessels, or a marine vessel and a terminal.

Vapor collection system means any equipment located on a marine vessel or at a terminal used for containing organic vapors displaced during the loading or unloading of marine vessels, ballasting into non-segregated ballast tanks, and housekeeping operations.

Vapor-tight marine vessel means a marine vessel with a crude oil or liquid product tank that has been demonstrated to have no leaks within the preceding 12 months. This demonstration shall be made using Method 21 of part 60, appendix A, during the loading of the last 50 percent of the total liquid. The testing shall be conducted during loading at a maximum rate. A reading of greater than 10,000 ppm as methane shall constitute a leak.

As an alternative, a marine vessel owner or operator may use the vapor-tightness test described in paragraph (e)(4) of this section to demonstrate vapor tightness. A marine vessel operated at negative pressure is assumed to be vapor-tight for the purpose of this standard.

Volatile Organic Compounds means any compound containing at least one atom of carbon, except methane, ethane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, ammonium carbonate, 1,1,1-trichloroethane, methylene chloride, trichlorofluoromethane, (CFC-11), dichlorodifluoromethane (CFC-12), chlorodifluoromethane (CFC-22), trifluoromethane (CFC-23), trichlorotrifluoroethane (CFC-113), dichlorotetrafluoroethane (CFC-114), chloropentafluoroethane (CFC-115), dichlorotrifluoroethane (HCFC-123), tetrafluoroethane (HFC-34a), dichlorofluoroethane (HCFC-141b), and chlorodifluoroethane (HCFC-142b).

(c) *Standards.* (1) The owner or operator of an affected facility shall install a control device and reduce VOC emissions vented to the atmosphere through the control device by 95 percent by weight. The control device shall not be required in cases where a vapor balance system is used to control emissions.

(2) The owner or operator of an affected facility shall provide a vapor collection system that is:

(i) Designed to collect all VOCs displaced from marine vessels during a loading event, and to transfer these vapors either to a control device or, in the case of a vapor balance, to another marine vessel.

(ii) Designed to prevent any VOC collected from one loading event from passing to the atmosphere from another loading event within the South Coast Air Basin or adjacent coastal waters.

(3) The emission control equipment shall be designed and operated to collect and process all organic compounds resulting from a loading event. If a boiler or process heater is used to comply with the percent reduction requirement, then the vent stream shall be introduced into the flame zone of such a device.

(4) The owner or operator of an affected facility shall operate any flare used to comply with paragraph (c)(1) of this section in accordance with the requirements of 40 CFR 60.18 (b) through (f).

(5) The owner or operator of an affected facility shall limit the loading of marine vessels to those vessels that are vapor tight as determined by either

paragraph (c)(5)(i), (5)(ii), (5)(iii), or (5)(iv) of this section.

(i) The owner or operator of an affected facility shall ensure that each marine vessel is loaded with liquid below atmospheric pressure (i.e., at negative pressure). If the pressure is measured at the interface between the shoreside vapor collection pipe and the marine vessel vapor line the pressure measured according to the procedures in paragraph (d)(7) of this section must be below atmospheric pressure (not applicable to vapor balance systems.)

(ii) The owner or operator of an affected facility shall use the following procedure to obtain the vapor-tightness documentation described in paragraph (f)(8) of this section. The vapor-tightness test for marine vessels is method 21 of part 60, appendix A, and shall be applied to any potential sources of vapor leaks. A reading of 10,000 ppmv or greater as methane shall constitute a leak.

(A) The owner or operator of an affected facility shall obtain the leak test documentation described in paragraph (f)(8) of this section for each marine vessel prior to a loading event, if available. The date of the test listed in the documentation must be within the 12 preceding months.

(B) If there is no documentation of a successful leak test conducted on the marine vessel in the preceding 12 months, the owner or operator of an affected facility shall require that a leak test of the marine vessel be conducted during at least the last 20 percent of the liquid loaded, or shall not conduct the loading event. The test shall be conducted when liquid transfer is at the maximum allowable loading rate.

(7) If no leak is detected, the owner or operator of an affected facility shall require that the documentation described in paragraph (f)(8) of this section is completed prior to departure of the vessel. The owner or operator of the affected facility shall retain a copy of the vapor-tightness documentation on file.

(2) If any leak is detected, the owner or operator of an affected facility shall require that the vapor-tightness failure be documented for the marine vessel owner or operator prior to departure of the vessel. The owner or operator of the affected facility shall retain a copy of the vapor-tightness documentation on file. Delay of repair of equipment for which leaks have been detected will be allowed if the repair is technically infeasible without dry-docking the vessel. This equipment will be excluded from future vapor-tightness tests until repaired. Repair shall occur the next time the vessel is dry-docked.

(C) If the marine vessel has failed its most recent vapor-tightness test as described in paragraph (c)(5)(i)(B) of this section, the owner or operator of the affected facility shall require that the owner or operator of the nonvapor-tight marine vessel provide documentation that the leaks detected during the previous vapor-tightness test have been repaired, or proof that repair is technically infeasible without dry-docking the vessel. Once the repair documentation has been provided, the owner or operator may conduct a loading event. The owner or operator shall require that the vapor-tightness test described in paragraph (c)(5)(i)(B) of this section be conducted during loading, and shall retain a copy of the vapor-tightness documentation on file.

(iii) The owner or operator of an affected facility shall obtain a copy of the marine vessel's vapor-tightness documentation described in paragraph (f)(8) of this section for a test conducted within the preceding 12 months in accordance with paragraph (e)(4) of this section.

(iv) Alternate procedures to those described in paragraphs (e)(4)(i), and (4)(ii) of this section may be used upon application to, and approval by, the Administrator.

(6) The owner or operator of an affected facility shall limit loading events to marine vessels equipped with vapor collection equipment that is compatible with the affected facility's vapor collection system.

(7) The owner or operator of an affected facility shall ensure that the maximum normal operating pressure of the marine vessel's vapor collection equipment shall not exceed 0.8 times the relief set pressure of the pressure-vacuum vents. This level is not to be exceeded when measured by the procedures specified in paragraph (e)(3) of this section.

(8) The owner or operator of an affected facility shall inspect the vapor collection system and the control device for detectable emissions, and shall repair any leaks detected. This inspection of the vapor collection system and control device shall be done during the loading or unloading of marine vessels.

(i) Vent systems that contain valves that could divert a vent stream from a control device shall have car-sealed opened all valves in the vent system from the emission source to the control device, and car-sealed closed all valves in the vent system that would lead the vent stream to the atmosphere, either directly or indirectly, bypassing the control device.

(d) *Monitoring requirements.* (1) Each owner operator of an affected facility that uses an incinerator to comply with the percent reduction requirement specified under paragraph (c)(1) of this section shall install, calibrate, maintain, and operate according to manufacturer's specifications a temperature monitoring device equipped with a continuous recorder and having an accuracy of ± 1 percent of the combustion temperature being measured expressed in degrees Celsius or ± 0.5 °C, whichever is greater.

(i) Where an incinerator other than a catalytic incinerator is used, the owner or operator of the affected facility shall install a temperature monitoring device in the firebox.

(ii) Where a catalytic incinerator is used, the owner or operator shall install temperature monitoring devices in the gas stream immediately before and after the catalyst bed.

(2) Each owner or operator of an affected facility that uses a flare to comply with paragraph (c)(1) of this section shall install, calibrate, maintain, and operate according to manufacturer's specifications a heat sensing device, such as an ultraviolet beam sensor or thermocouple, at the pilot light to indicate the presence of a flame during the entire loading cycle.

(3) Each owner or operator of an affected facility that uses a steam generating unit or process heater to comply with paragraph (c)(1) of this section shall comply with the following requirements. Where a steam generating unit with a design heat input capacity of less than 44 MW is used to comply with paragraph (c)(1) of this section, the owner or operator of an affected facility shall comply with paragraph (d)(3)(i) of this section. Where a steam generating unit or process heater with a design heat input capacity of 44 MW or greater is used to comply with (c)(1), the owner or operator of an affected facility shall comply with paragraph (d)(3)(ii) of this section.

(i) Install in the firebox, calibrate, maintain, and operate according to manufacturer's specifications a temperature monitoring device equipped with a continuous recorder and having an accuracy of ± 1 percent of the temperature being measured expressed in degrees Celsius or ± 0.5 °C, whichever is greater, for steam generating units or process heaters of less than 44 MW design heat input capacity.

(ii) Monitor and record the periods of operation of the steam generating units or process heater if the design heat input capacity of the steam generating unit or

process heater is 44 MW or greater. The records must be readily available for inspection.

(4) Each owner or operator of an affected facility that uses a carbon absorption system to comply with the percent reduction requirement specified under paragraph (c)(1) of this section shall install, calibrate, maintain, and operate according to manufacturer's specifications a device that continuously indicates and records the concentration or reading of organic compounds in the outlet gas stream of each carbon absorber bed.

(5) The owner or operator of an affected facility who wishes to demonstrate compliance with the standards specified under paragraph (c)(1) of this section using control devices other than an incinerator, steam generating unit, process heater, carbon absorber, or flare, or a vapor balance system, shall provide the Administrator with information describing the operation of the control system and the process parameter(s) that would indicate proper operation and maintenance of the system. The Administrator may request further information and will specify appropriate monitoring procedures or requirements.

(6) Each owner or operator of an affected facility complying with paragraph (c)(5)(i) of this section shall install, calibrate, maintain, and operate a recording pressure measurement device (magnehelic gauge or equivalent device) and an audible and visible alarm system that is activated when the pressure vacuum specified in paragraph (c)(5)(i) of this section is not attained. The owner or operator shall place the alarm system so that it can be seen and heard where cargo transfer is controlled and on the open deck.

(7) Owners or operators using a vent system that contains valves that could divert a vent stream from a control device used to comply with the provisions of this subpart shall do one or a combination of the following:

(i) Install a flow indicator immediately downstream of each valve that, if opened, would allow a vent stream to bypass the control system and be emitted, either directly or indirectly, to the atmosphere. The flow indicator shall be capable of recording flow at least once every 15 minutes.

(ii) Monitor the valves once a month, checking the position of the valves and the condition of the car-seal, and document all times when the car seals have been broken and the valve position has been changed (i.e., from opened to closed for valves in the vent piping to the control device and from closed to open for valves that allow the stream to

be vented directly or indirectly to the atmosphere).

(e) *Test methods and procedures.* (1) The procedures for determining compliance with paragraph (c)(1) of this section for all control devices other than flares is as follows:

(i) All testing equipment shall be prepared and installed as specified in the appropriate test methods.

(ii) The time period for a performance test shall not be less than 6 hours during which at least 300,000 liters of organic liquid are loaded. If the throughput criterion is not met during the initial 6 hours, the test may be either continued until the throughput criterion is met, or resumed the next day with at least another 6 complete hours of testing.

(iii) For intermittent control devices:

(A) The vapor holder level of the intermittent control device shall be recorded at the start of the performance test. The end of the performance test shall coincide with the time when the vapor holder is at its original level.

(B) At least two startups and shutdowns of the control device shall occur during the performance test. If this does not occur under an automatically controlled operation, the system shall be manually controlled.

(iv) An emission testing interval shall consist of each 5-minute period during the performance test. For each interval:

(A) The reading from each measurement instrument shall be recorded.

(B) Method 1 or 1A of part 60, appendix A, as appropriate, shall be used for selection of the sampling site.

(C) The volume exhausted shall be determined using method 2, 2C, or 2D of part 60, appendix A, as appropriate.

(D) The average VOC concentration upstream and downstream of the control device in the vent shall be determined using method 25A or method 25B of appendix A of this part, using methane as the calibration gas. The average VOC concentration shall correspond to the volume measurement by taking into account the sampling system response time.

(v) The mass emitted during each testing interval shall be calculated as follows:

$$M = FKV_s C$$

where:

M = Mass of VOC emitted during testing interval, kg

V_s = Volume of air-vapor mixture exhausted, m^3 at standard conditions.

C = VOC concentration (as methane), at the exhaust vent, ppmv.

K = Density, (kg/ m^3 methane), standard conditions.

K = 0.66 for methane

F = Conversion factor, (m^3 methane/ m^3 air) (1/ppmv).

F = 106

s = Standard conditions, 20 °C and 760 mm Hg.

(vi) The VOC mass emission rates before and after the control device shall be calculated as follows:

$$E = \frac{\sum_{i=1}^n M_i}{\sum_{i=1}^n T_i}$$

where:

E = Mass flow rate of VOC emitted, kg/hr.

M_i = Mass of VOC emitted during testing interval i, kg.

T_i = Time of a testing interval, i, hrs.

n = Number of testing intervals.

(vii) The percent reduction across the control system shall be calculated as follows:

$$R = 100(E_b - E_c)/E_b$$

where:

R = Control efficiency of control system, %.

E_b = Mass flow rate of VOC prior to control device, kg/hr.

E_c = Mass flow rate of VOC with control device, kg/hr.

(2) When a flare is used to comply with paragraph (c)(1) of this section, a performance test according to method 22 of appendix A of this part, shall be performed to determine visible emissions. The observation period shall be at least 2 hours and shall be conducted according to method 22. Performance testing shall be conducted during at least three complete loading cycles with a separate test run for each loading cycle. The observation period for detecting visible emissions shall encompass each loading cycle. Integrated sampling to measure process vent stream flow rate shall be performed continuously during each loading cycle.

(3) For the purpose of determining compliance with paragraph (c)(7) of this section, the following procedures shall be used:

(i) Calibrate and install a pressure measurement device (liquid manometer, magnehelic gauge, or equivalent instrument), capable of measuring up to the relief set pressure of the pressure-vacuum vents.

(ii) Connect the pressure measurement device to a pressure tap in the affected facility's vapor collection system, located as close as possible to the connection with the marine vessel.

(iii) During the performance test, record the pressure every 5 minutes while a marine vessel is being loaded, and record the highest instantaneous

pressure that occurs during each loading cycle.

(4) The following test method shall be used to comply with the marine vessel vapor-tightness requirements of paragraph (c)(5)(iii) of this section:

(i) Each organic liquid tank shall be pressurized with dry air or inert gas to not less than 1.0 psig and not more than the pressure of the lowest relief valve setting.

(ii) Once the pressure is obtained, the dry air or inert gas source shall be shut off.

(iii) At the end of one-half hour, the pressure in the organic liquid tank and piping shall be measured. The change in pressure shall be calculated using the following formula:

$$DP = P_1 - P_2$$

where:

DP = Change in pressure, inches of water.

P_1 = Pressure in tank when air/gas source is shut off, inches of water.

P_2 = Pressure in tank at the end of one-half hour after air/gas source is shut off, inches of water.

(iv) The change in pressure, P , shall be compared to the pressure drop calculated using the following formula:

$$DP_m = 0.861 P_a L/V$$

where:

P_m = Maximum allowable pressure change, inches of water.

P_a = Pressure in tank when air/gas source is shut off, pounds per square inch absolute (psia).

L = Maximum permitted loading or unloading rate of vessel, barrels per hour.

V = Total volume of product tank, barrels.

(v) If $DP < DP_m$, the vessel is vapor tight.

(vi) If $DP > DP_m$, the vessel is not vapor tight and the source of the leak must be identified and repaired prior to retesting.

(f) *Reporting and recordkeeping.* (1) Each owner or operator of an affected facility subject to the provisions of this subpart shall keep an up-to-date, readily accessible record of the following data measured during each performance test. Where a steam generating unit or process heater with a design heat input capacity of 44 MW or greater is used to comply with paragraph (c)(1) of this section, a report containing performance test data need not be submitted, but a report containing the information in paragraph (f)(1)(iii)(A) of this section is required.

(i) Where an owner or operator subject to the provisions of this subpart is complying with paragraph (c)(1) of this section through use of an incinerator, the following information shall be recorded:

(A) The average firebox temperature of the incinerator (or the average temperature upstream and downstream of the catalyst bed), measured at least every 2 minutes during a loading cycle if the total time period of the loading cycle is less than 3 hours and every 15 minutes if the total time period of the loading cycle is equal to or greater than 3 hours. The measured temperature shall be averaged over the loading cycle;

(B) The percent reduction of VOC determined as specified in paragraph (e)(1) of this section achieved by the incinerator;

(C) The duration of the loading cycle.

(ii) Where an owner or operator subject to the provisions of this subpart is complying with paragraph (c)(1) of this section through use of a smokeless flare or other flare design (i.e., steam-assisted, air-assisted or nonassisted), the owner or operator shall maintain records of all visible emission readings, heat content determinations, flow rate measurements, maximum permitted velocity calculations, exit velocity determinations made during the performance test, continuous records of the flare pilot flame monitoring measured continuously during the loading cycle, duration of all loading cycles and records of all loading cycles during which the pilot flame is absent for each vent stream.

(iii) Where an owner or operator subject to the provisions of this subpart is complying with paragraph (c)(1) of this section through the use of a steam generating unit or process heater, the owner or operator shall maintain records of the following:

(A) A description of the location at which the vent stream is introduced into the steam generating unit or process heater;

(B) The average combustion temperature of any steam generating unit or process heater with a design heat input capacity of less than 44 MW, for which measurements are taken at least every 2 minutes during a loading cycle if the total time period of the loading cycle is less than 3 hours and every 15 minutes if the total time period of the loading cycle is equal to or greater than 3 hours. The measured temperature shall be averaged over the loading cycle;

(C) The duration of the loading cycle.

(iv) Where an owner or operator subject to the provisions of this subpart is complying with paragraph (c)(1) of this section through the use of a carbon adsorption system, the owner or operator shall maintain records of the control efficiency, R , of the carbon adsorption system, and all supporting performance test data and calculations used to determine that value.

(v) Each owner or operator subject to the provisions of this subpart shall submit with the initial performance test an engineering report describing in detail the vent system used to vent each affected vent stream to a control device. This report shall include all valves and vent pipes that could vent the stream to the atmosphere, thereby bypassing the control device, and identify which valves are car-sealed opened and which valves are car-sealed closed.

(2) Each owner or operator subject to the provisions of this subpart shall keep up-to-date, readily accessible continuous records of the equipment operating parameters specified to be monitored under paragraphs (d) (1), (3), and (4) of this section as well as up-to-date, readily accessible records of periods of operation during which the parameter boundaries established during the most recent performance test are exceeded. The Administrator may at any time require a report of these data. Periods of operation, during which the parameter boundaries established during the most recent performance tests are exceeded, are defined as follows:

(i) For thermal incinerators, all loading cycles during which the average combustion temperature was more than 28 °C below the average loading cycle combustion temperature during the most recent performance test at which compliance with paragraph (c)(1) of this section was determined;

(ii) For catalytic incinerators, all loading cycles during which the average temperature of the vent stream immediately before the catalyst bed is more than 28 °C below the average temperature of the process vent stream during loading cycles during the most recent performance test at which compliance with paragraph (c)(1) of this section was determined;

(iii) For steam generating units or process heaters with a design heat input capacity of less than 44 MW, all loading cycles during which the average combustion temperature was more than 28 °C below the average combustion temperature during the most recent performance test at which compliance with paragraph (c)(1) of this section was determined;

(iv) For steam generating units or process heaters, whenever there is a change in the location at which the vent stream is introduced into the flame zone as required under paragraph (c)(1) of this section;

(v) For carbon adsorbers, all 3-hour periods of operation during which the average VOC concentration or reading of organics in the exhaust gases is more

than 20 percent greater than the average exhaust gas concentration or reading measured by the organics monitoring device, during the most recent determination of the recovery efficiency of the carbon adsorber that demonstrated that the facility was in compliance.

(3) If a vent system containing valves that could divert the emission stream away from the control device is used, each owner or operator subject to the provisions of this subpart shall keep, for at least 2 years up-to-date, readily accessible continuous records of:

(i) All periods when flow is indicated if flow indicators are installed under paragraph (d)(8)(i) of this section;

(ii) All times when maintenance is performed on car-sealed valves, when the car-seal is broken, and when the valve position is changed (i.e., from open to closed for valves in the vent piping to the control device and from closed to open for valves that vent the stream directly or indirectly to the atmosphere, bypassing the control device) if valves are monitored under paragraph (d)(7)(ii) of this section.

(4) Each owner or operator of an affected facility subject to the provisions of this subpart who uses a steam generating unit or process heater with a design heat input capacity of 44 MW or greater to comply with paragraph (c)(1) of this section shall keep up-to-date, readily accessible records of all periods of operation of the steam generating unit or process heater. Examples of such records could include records of steam use, fuel use, or monitoring data collected pursuant to other State or Federal regulatory requirements.

(5) Each owner or operator of an affected facility subject to the provisions

of this subpart shall keep up-to-date, readily accessible records of the flare pilot flame monitoring specified under paragraph (d)(2) of this section, as well as up-to-date, readily accessible records of any absence of the pilot flame during a loading cycle.

(6) Each owner or operator of an affected facility subject to the requirements of paragraph (c) of this section shall submit to the Administrator quarterly reports of the following information. The owner or operator shall submit the initial report within 90 days after the effective date of this subpart or 90 days after startup for a source that has an initial startup date after the effective date:

(i) Periods of operation where there were exceedances monitored parameters recorded under paragraph (f)(2) of this section;

(ii) All periods recorded under paragraph (f)(3)(i) of this section when the vent stream is diverted from the control device.

(iii) All periods recorded under paragraph (f)(4) of this section when the steam generating unit or process heater was not operating.

(iv) All periods recorded under paragraph (f)(5) of this section in which the pilot flame of the flare was absent.

(v) All times recorded under paragraph (f)(3)(ii) of this section when maintenance is performed on car-sealed valves, when the car-seal is broken, and when the valve position is changed.

(7) The owner or operator of an affected facility shall keep the vaportightness documentation required under paragraph (c)(5) of this section on file at the affected facility in a permanent form available for inspection.

(8) The owner or operator of an affected facility shall update the documentation file required under paragraph (c)(5) of this section for each marine vessel at least once per year to reflect current test results as determined by the appropriate method. The owner or operator shall include, as a minimum, the following information in this documentation:

(i) Test title;

(ii) Affected facility owner and address;

(iii) Affected facility identification number;

(iv) Testing location;

(v) Date of test;

(vi) Tester name and signature;

(vii) Witnessing inspector: name, signature, and affiliation.

(9) Each owner or operator of an affected facility complying with paragraph (a)(2) of this section shall record the following information. The first year after promulgation the owner or operator shall submit a report containing the requested information to EPA. After the first year, the owner or operator shall continue to record; however, no reporting is required. The information shall be made available upon request. The information shall include, as a minimum:

(i) The affected facility's name and address;

(ii) The type of organic liquid loaded;

(iii) The type of transfer (i.e., marine vessel to marine vessel, loading to or from terminal, ballasting, or housekeeping operations);

(iv) The number of loading event and the amount of organic liquid transferred during each event.

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Part III

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 882

Neurological Devices; Proposed Rule to
Reclassify the Electroconvulsive Therapy
Device Intended for Use in Treating
Severe Depression

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 882

[Docket No. 82P-0316]

Neurological Devices; Proposed Rule to Reclassify the Electroconvulsive Therapy Device Intended for Use in Treating Severe Depression

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to reclassify the electroconvulsive therapy (ECT) device intended for use in treating severe depression from class III (premarket approval) into class II (performance standards) based on new information regarding the device. FDA is proposing that such reclassification become effective upon the effective date of a performance standard established for the device. This document summarizes the basis for the agency's proposal and its proposed finding that there is sufficient valid scientific evidence and other acceptable information available to establish a performance standard to provide reasonable assurance of the safety and effectiveness of the device for the treatment of severe depression.

DATES: Comments by November 6, 1990.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Robert F. Munzner, Center for Devices and Radiological Health (HFZ-430), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1053.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Regulatory Scheme for Classification and Reclassification
- II. History of the Proceedings
- III. Reasons for the Proposal
- IV. Summary of Data on which the Proposed Reclassification is Based
 - A. Benefits
 - B. Risks
 - C. Risks Versus Benefits
 - D. Performance Standard
 - 1. Labeling Contents
 - 2. Design Features
- V. Comments
 - A. General Comments
 - B. Requirement for a Performance Standard Under Section 514 of the Act
 - C. Intended Uses

- D. Reclassification Procedures
- E. Safety
- F. Development of a Performance Standard
- VI. FDA's ECT Task Force Analysis and Results
- VII. References
- VIII. Environmental Impact
- IX. Economic Impact

I. Regulatory Scheme for Classification and Reclassification

Section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c) requires the classification of medical devices into one of three regulatory classes: class I (general controls), class II (performance standards), or class III (premarket approval). Devices that were on the market before May 28, 1976, the date of enactment of the Medical Device Amendments of 1976 (the amendments) (Pub. L. 94-295), and devices marketed on or after that date that are substantially equivalent to such devices, have been classified by FDA. For the sake of convenience, this preamble refers to both the devices that were on the market before May 28, 1976, and the substantially equivalent devices that were marketed on or after that date as "preamendments devices."

Sections 501(f), 513, and 515(b) of the act (21 U.S.C. 351(f), 360c, and 360e(b)), taken together, establish as a general requirement that a preamendments device that FDA has classified into class III is subject, in accordance with section 515 of the act, to premarket approval. Section 513(e) (21 U.S.C. 360c(e)) of the act provides that, based on "new information," a device's classification may be changed by regulation. Reclassification of a device may be initiated by the agency or upon petition of an interested person. In the proceeding for promulgation of a regulation to change a device's classification, the Commissioner of Food and Drugs may secure a recommendation respecting the proposed change in a device's classification from an appropriate panel of experts, referred to in section 513(c) of the act (21 U.S.C. 360c(c)), to which the device was originally referred for review and a recommendation regarding classification. Section 513(e) of the act (21 U.S.C. 360c(e)) further establishes that a regulation to change the classification of a device from class III into class II may provide that such classification not take effect until the effective date of a performance standard established for the device under section 514 of the act (21 U.S.C. 360d).

The term "new information," as used in 513(e) of the act (21 U.S.C. 360c(e)), includes information developed as a result of a reevaluation of the data

before the agency when a device was originally classified, as well as information not presented, not available, or not developed at that time. See, e.g., *Holland-Rantos v. United States Department of Health, Education, and Welfare*, 587 F.2d 1173, 1174 n.1 (D.C. Cir. 1978); *Upjohn v. Finch*, 422 F.2d 944 (6th Cir. 1970); *Bell v. Goddard*, 366 F.2d 177 (7th Cir. 1966).

Reevaluation of the data previously before the agency is an appropriate basis for subsequent regulatory action where the reevaluation is made in light of changes in "medical science." *Upjohn v. Finch*, supra, 422 F.2d at 951. Whether data before the agency is past or new data, the "new information" on which any reclassification is based is required to consist of "valid scientific evidence," as defined in section 513(a)(3) of the act (21 U.S.C. 360c(a)(3)) and 21 CFR 860.7(c)(2). FDA relies upon "valid scientific evidence" in the classification process to determine the level of regulation for devices. For the purpose of reclassification, the valid scientific evidence upon which the agency relies must be publicly available. Publicly available information excludes trade secret or confidential commercial information, e.g., the contents of premarket approval applications (PMA's). (See section 520(c) of the act (21 U.S.C. 360j(c)).)

II. History of the Proceedings

In the Federal Register of November 28, 1978 (43 FR 55729), FDA issued a proposed rule to classify the ECT device into class II. The preamble to the proposed classification regulation included the recommendation of the Neurological Devices Panel (the Panel), an FDA advisory committee, regarding the classification of the ECT device. The Panel's recommendation included a summary of the reasons why it believed a performance standard would be adequate to assure the safety and effectiveness of the device. The Panel further recommended that establishment of a performance standard for the device be a high priority.

FDA received numerous comments in response to the proposal to classify the ECT device into class II that disputed the adequacy of the data upon which the Panel had relied in judging the risks and benefits of the device. After reviewing these comments, FDA requested that the Panel reconsider whether sufficient information was, in fact, available on which to classify the device into class II and to establish a performance standard to provide reasonable assurance of the safety and effectiveness of the device. In a public meeting on May 29, 1979, the

Panel considered the public comments and concluded that sufficient information was not available at that time. Accordingly, the Panel recommended that FDA classify the device into class III, rather than class II, and in the Federal Register of September 4, 1979 (44 FR 51776), FDA published a final rule classifying the ECT device into class III (21 CFR 882.5940).

At its May 29, 1979, meeting, the Panel also encouraged the American Psychiatric Association to petition the agency to reclassify the ECT device from class III into class II when additional information on which to base a reclassification petition became available to the association. On August 13, 1982, the American Psychiatric Association, Washington, DC 20009, submitted to FDA under section 513(e) of the act (21 U.S.C. 360c(e)) a petition to reclassify the ECT device from class III into class II. Under section 513(e) of the act (21 U.S.C. 360c(e)), FDA elected to refer the petition to the Panel for its recommendation on the requested change in classification. In a public meeting on November 4, 1982, the Panel recommended that the device be reclassified from class III into class II and that any change in classification not take effect until a performance standard for the ECT device was established under section 514 of the act (21 U.S.C. 360d).

FDA agreed with the recommendation of the Panel, but tentatively concluded that reclassification should be limited to certain indications. Therefore, in the Federal Register of April 5, 1983 (48 FR 14758), FDA published a notice of intent to initiate proceedings to reclassify the ECT device intended to be used for the treatment of severe depression and schizophrenia from class III into class II. The notice also set forth FDA's intent not to reclassify ECT devices intended for use in any condition other than severe depression or schizophrenia and to initiate proceedings pursuant to section 515(b) of the act (21 U.S.C. 360e(b)) to require that ECT devices labeled for indications that remain in class III have approved applications for premarket approval. Since that time, however, FDA has tentatively concluded that evidence regarding the effectiveness of ECT in the treatment of schizophrenia is inconclusive. Accordingly, this document proposes to limit reclassification to those ECT devices intended to be used solely for the treatment of severe depression. A more detailed discussion of "severe depression" is provided under section IV of this preamble.

After the end of the comment period, FDA received numerous letters from individuals and organizations concerned about the safety of ECT and its effects on patients. These letters generally opposed reclassification because of safety concerns. FDA understands patient concerns. However, reclassification is neither an endorsement of the usage of ECT, nor does it imply that the device is considered more safe than before reclassification.

The purpose of medical device classification, as prescribed by law, is to determine which of the three regulatory classes is most appropriate based on the degree of control necessary to assure the safety and effectiveness of the device. The assignment of a product to either class II or class III is not simply dependent on the risk associated with the device; rather it is also a determination of the type of control necessary to assure the device's safety and effectiveness. Consequently, the proposed reclassification of ECT devices should not be interpreted to mean that the agency now considers the ECT device safer than it was thought to be before FDA's reclassification proposal. If FDA reclassifies ECT devices as proposed, a judgment must be made, based on "new information," that a product-by-product review, as required for class III devices, will be unnecessary and wasteful of resources, because a performance standard, the control for class II devices, will sufficiently assure the safety and effectiveness of the device. However, this proposal to reclassify ECT devices, notwithstanding supportive "new information," will not take effect until a performance standard is established. In other words, ECT devices will remain classified as class III until the effective date of a performance standard which assures the safety and effectiveness of the device.

III. Reasons for the Proposal

Based on its review of new, publicly available, valid scientific evidence, FDA has tentatively concluded that the ECT device intended for treatment of severe depression should be reclassified into class II. In FDA's judgment, the information discussed in this preamble to the proposed rule shows that there is sufficient information to establish a performance standard to provide reasonable assurance of the safety and effectiveness of the device for this intended use.

The decision to propose reclassification into class II and not into class I is based on the agency's belief that class I controls alone cannot provide reasonable assurance of the

safety and effectiveness of the device. Section 513(a)(1)(A) of the act (21 U.S.C. 360c(a)(1)(A)), in pertinent part, permits classification of a device into class I only if the device is one "for which the controls authorized by or under section 501, 502, 510, 516, 518, 519, or 520 or any combination of such sections are sufficient to provide reasonable assurance of the safety and effectiveness of the device."

Although general controls are useful in the regulation of ECT devices, FDA has tentatively concluded that class I controls by themselves do not provide reasonable assurance of the safety or effectiveness of the electrical output or design features of these devices. Control of the specifications of the devices can and should be standardized, something the general controls may not accomplish.

FDA's proposal is consistent with the recommendation of the Panel that considered ECT classification and reclassification to the extent that ECT devices should be class II devices for the indication of severe depression. The agency tentatively concludes that publicly available valid scientific evidence exists to support a class II classification of the ECT device intended for such use. Consistent with the purpose of the act, a class II designation, defined by section 513(a)(1)(b) of the act, (21 U.S.C. 360c(a)(1)(b)), describes the least amount of regulation necessary to reasonably assure the safe and effective use of ECT devices for the treatment of severe depression.

Section 513(a)(1)(C) of the act (21 U.S.C. 360c(a)(1)(C)) provides that a device which cannot be classified in class I or class II be classified in class III and subject to premarket approval. All indications, other than severe depression, will remain in class III because FDA has tentatively concluded that sufficient publicly available valid scientific evidence does not exist at this time to support a reclassification of ECT devices into class II for use in the treatment of any condition other than severe depression. Therefore, FDA advises that if the rule proposed by this document is made final, those ECT devices intended for use in treating any condition other than severe depression will be subject, in accordance with section 515 of the act, to premarket approval.

Following publication of this proposed rule to reclassify the ECT device that is intended to treat severe depression, FDA intends to initiate proceedings under section 515(b) of the act to require premarket approval applications for any

ECT device intended for use in conditions other than severe depression. Furthermore, if a standard that meets the requirements of section 514(a)(2) of the act in response to the invitation (required by section 514(c) of the act) to develop a standard is not forthcoming within a reasonable period of time, FDA will consider action to require premarket approval for ECT devices indicated for use in the treatment of severe depression, the subject of this proposal.

IV. Summary of Data on Which the Proposed Reclassification Is Based

The term depression is used to describe a heterogeneous group of disorders. It is generally agreed by clinical investigators that only one subtype of depression, endogenous or psychotic depression, defined as "major depressive episode with melancholia" in the "Diagnostic and Statistical Manual of Mental Disorders" (DSM-III-R; 1987) of the American Psychiatric Association (Ref. 96), responds well to somatic therapies such as ECT (Refs. 15, 43, 47, 54, and 74). Accordingly, for the purpose of this document, "major depressive episode with melancholia" is referred to as "severe depression."

A. Benefits

Studies comparing the effectiveness of ECT with pharmacologic treatments have shown ECT to be more effective than the tricyclic antidepressants and monoamine oxidase inhibitors (refs. 5, 6, 7, 22, 23, and 78), particularly in those studies employing drug placebo and sham ECT (Refs. 10, 22, and 78). Recent work of Avery and Winokur (Ref. 7) revealed that ECT-treated patients improved at a significantly higher rate (90 percent) than those receiving adequate drug therapy (74 percent), inadequate drug therapy (60 percent), or no somatic treatment (60 percent). The study included a total of 609 separate psychiatric hospitalizations meeting rigorous diagnostic criteria for severe depression.

Avery and Lubrano (Ref. 5) published the results of an Italian study of 282 patients suffering from severe depression in which all patients were treated with imipramine for a minimum of 25 days. Nonresponding patients (39 percent) were then given ECT. Eighty-five percent of the patients not responding to drug therapy showed significant improvement.

The strong role of ECT in the treatment of patients with severe depression who were unresponsive to drug therapy has been recently addressed in a clinical series undertaken by the National Institute of

Mental Health (NIMH) (Ref. 70). The Royal College of Psychiatrists, the American Psychiatric Association, and the Canadian Psychiatric Association have also reviewed the use of ECT in recent years and have concluded that, given contemporary refinements in technique, ECT is a safe and effective treatment for severe depression (Refs. 2, 14, and 75).

Suicide and attempted suicides occur frequently among severely depressed persons. The effectiveness of ECT provides, among other benefits, the benefit of reduced risk of death among these persons, as shown by the Avery and Winokur study (Ref. 6).

B. Risks

Risks associated with ECT are primarily related to the technique of administration, which has been significantly modified over the past 40 years. The use of general anesthesia, muscle relaxants, and oxygen has eliminated or attenuated most of the adverse reactions associated with the treatment. Today, cardiac disturbances are the primary physical risk of ECT (Refs. 3, 20, 51, 64, 66, and 71). Anticholinergic drugs, anesthesia, and adequate ventilation are used to reduce the frequency and severity of cardiac arrhythmia associated with the treatment (Refs. 1, 59, 60, 67, and 69) and minimize transient elevations of systemic and cerebral blood pressure (Refs. 1, 3, 11, 48, 49, and 50).

ECT-related memory deficits are the principal patient complaint. Assessment of memory impairment following ECT is complicated by the observation that memory functions become increasingly impaired as depression worsens and memory functions improve with the abatement of depression (Ref. 75). Retrospective studies to assess memory impairment are not adequate because of the lack of baseline measurements. For example, a study by Squire, et al. (Ref. 82), examined the effects of ECT on various aspects of retrograde memory function and found that there was no objective evidence of residual impairment of function. This study retrospectively examined data from patients who had received ECT 6 to 9 months previously, comparing the results to those obtained for both a non-ECT group and a group which had just recently received ECT treatments. As is the nature of retrospective studies, however, such findings can only be considered suggestive, due to the lack of baseline measurements. Other published reports on this subject consist for the most part of a large number of anecdotal reports and poorly designed studies, neither of which can provide reliable

answers to questions regarding the incidence, cause, and severity of persistent memory deficits.

Studies that have attempted to quantify memory deficits, or even to identify persistent memory changes, are beset with numerous sources of error, e.g., lack of controls, inappropriate selection of subjects, inadequate baseline measurements, the uncertainty of tasks used for assessment, treatment parameters, and times of testing. For example, Goldman, et al. (Ref. 37), and Templer, et al. (Ref. 88), studies sometimes relied upon to support the hypothesis of ECT-related memory loss, reported persistent changes in a group of hospitalized chronic schizophrenics who had received a very large number of ECT treatments (mean treatments 70 and 58, respectively) as compared to others who received relatively few treatments and who had similar psychiatric impairment. However, the assessments made in the studies were unrelated to memory loss and were based on cognitive and motor skills. The non-ECT-related intergroup differences in these severely and chronically ill populations could not be ruled out.

Teuber, et al. (Ref. 89), reported persistent memory changes in a study comparing prefrontal lobectomy patients both with and without a history of ECT treatments (with only 8 of 34 in the former group) based on a comprehensive neuropsychological battery of tests. The authors noted that the ECT-treated patients were more chronically and severely ill, and that many had received large numbers of ECT treatments, with some also receiving other somatic treatments such as insulin shock and deep sedation. This lack of comparability in the two patient groups makes the results suggestive rather than conclusive.

The nature of ECT-related amnesia has been reviewed in recent years by a number of investigators (Refs. 2, 29, 44, 81, and 91). During each seizure, both retrograde and anterograde amnesia occur. There is some evidence that the severity and persistence of this amnesia may be minimized by controlling the number and frequency of the seizures (Refs. 27, 35, 36, 37, 57, 94, and 95), by placing electrodes over the nondominant hemisphere of the brain (Refs. 24 through 28, 44, 58, 81, 83, and 94), by using minimal current intensities to induce seizures (Ref. 29) and possibly, by using pulsatile stimuli rather than sine wave stimuli (Refs. 17 and 18).

Reports of uncontrolled studies comparing two ECT groups are numerous and, for the most part, suggest that memory is regained, finding no

differences between experimental groups at times varying from 14 days to 12 months (Refs. 12, 13, 32, 38, 46, 68, and 85). Two such studies reported significant group differences. Each study had a serious methodological flaw. In one study, treatments had been continued during the followup period (Ref. 42), and in the other the number of patients per group was very small (Ref. 19).

Squire et al., investigating the effects of ECT on various aspects of retrograde memory function, suggested that although information acquired 2 to 20 years prior to ECT was temporarily lost, it was fully recovered within 6 months following treatment. Information acquired 1 week prior to ECT treatment was permanently lost; that acquired 1 week to 2 years prior to treatment may be recovered (Refs. 81 and 84).

Reports of neuropathological changes following ECT are variable and inconclusive. It appears likely that these changes are due to hypoxia which, data suggest, does not occur when adequate oxygenation and muscle relaxants are used (Refs. 41, 56, and 72).

C. Risks Versus Benefits

The clinical literature is consistent in its appraisal of ECT as an effective treatment for severe depression (Refs. 7, 21, 29, 39, 40, 55, 63, 76, 78, 79, 80, 90, 92, and 93). The availability of ECT is particularly important for those persons who do not respond to drug therapy and for persons who may be at risk for personal injury or suicide.

Although patients with prior coronary artery and myocardial disease are subject to additional risk (Refs. 1, 3, 8, 9, 34, 67, and 69), the mortality associated with ECT is estimated to be comparable to that of minor surgery with general anesthesia (Refs. 2, 4, 45, and 75).

Scientific studies reported in the published literature suggest that ECT causes memory deficits; however, these studies lacked necessary controls and were otherwise poorly designed (Refs. 13, 16, 27, 29, 31, 52, 73, and 81). The results of studies conducted to identify and quantify memory deficits are therefore not persuasive and suggestive at best. There are abundant anecdotal reports and patient complaints of persistent memory deficits. The nature of the material, coupled with the general lack of objective testing, make these claims difficult to evaluate. Still, the possibility that some individuals may have a persistent organic deficit must be considered (Ref. 33).

Given the known risks of self-injury and suicide associated with untreated severe depression, and the patient risks associated with severe depression that

is treated with a therapy less effective than ECT, and given the reliably documented risks associated with ECT, the benefits to ECT outweigh its risks (Refs. 5, 39, and 104 [6]). Moreover, the risks of ECT are known to be comparable to risks inherent in other available therapies for severe depression.

D. Performance Standard

FDA believes a performance standard is necessary to assure the safe and effective use of the ECT device. Sufficient information exists to show that the performance parameters of ECT can be evaluated generically by a standard, thus obviating the need for product-by-product review under PMA's. The risks associated with ECT are primarily related to the technique of administration and to the duration and nature of the patient's exposure to the device. Therefore, FDA believes, based on publicly available valid scientific evidence, that the following criteria define a standard that would provide a reasonable assurance of a safe and effective device:

1. Labeling Contents

a. Priority order of treatment, i.e., ECT use should progress from unilateral to bilateral electrode placement and from brief-pulse to sine wave stimulation and from subcritical to minimum amounts of energy needed to induce seizure activity (Refs. 17, 18, 29, 100, and 101).

b. Treatment protocols which include continued reassessment of the patient throughout the treatment course, physiologic monitoring, and reaffirming patient consent throughout individual treatment sessions, to maximize the benefits (efficacy) and minimize risks (impairments) (Ref. 104 [6] and [16]).

c. Clearly delineated clinical indications and contraindications (Ref. 104 [Migmogma, 1986; Major, 1984; Selvin, 1987; Crowe, 1984]).

d. Any other information needed to address the factors necessary to assure the safe and effective use of ECT.

2. Design Features

Design-related requirements that are necessary to provide reasonable assurance of safe and effective performance or that improve device safety and effectiveness by reducing the likelihood of human error should be included. Requirements that control energy output, duration, and frequency, and that control any necessary timers, electrodes, and cables are factors which promote the assurance of safe and effective treatments. Such environmental requirements that would assure accurate device performance

over expected environmental ranges of temperature, humidity, supply voltage, and frequency, and normal variations in load resistance are also judged worthy of inclusion. Several established standards (e.g. IEC 601-1 and UL 544) deal with these requirements and would be used to the maximum extent possible to establish requirements for ECT devices.

Although there is a possibility that some individuals may sustain a persistent organic memory deficit (temporary or permanent memory loss), FDA believes that notwithstanding this adverse effect, the risk/benefit assessment for ECT intended for treatment of severe depression is favorable. FDA, therefore, concludes that the measures necessary to reasonably assure the safe and effective use of ECT devices for severe depression may be reduced to a performance standard and that a premarket approval application for each manufacturer's ECT device is unnecessary.

V. Comments

In response to the April 8, 1983, notice of intent to change the classification of the device, FDA received about 100 comments from academic sources, the user community, public interest groups, and former patients. The majority of the comments were from former patients treated with ECT who objected to the proposed reclassification because of their personal experiences. Also, comments were received from eight former patients or spouses of patients who supported the use of ECT based on their personal experiences.

Comments supporting the reclassification of the ECT device were received from each of the domestic manufacturers of ECT device products, from the National Electrical Manufacturers Association, from several professional societies, and from numerous practicing physicians. A summary of these comments and the agency's response to them follow:

A. General Comments

1. A comment from a nonvoting member of the Panel reaffirmed the basis for the Panel's unanimous recommendation that the ECT device be reclassified from class III into class II upon the effective date of a performance standard for the device and urged FDA to accept the recommendation. The comment emphasized that the requirement that FDA establish a performance standard under section 514 of the act was pivotal to the Panel's decision because the Panel was

frustrated by the lack of activity regarding the device and believed that the data submitted by the American Psychiatric Association in its reclassification petition was not by itself adequate to establish a regulatory standard.

FDA agrees that the information submitted in the reclassification petition is not sufficient to establish a regulatory standard. However, FDA has conducted an independent review of the literature, and more recently formed a task force to examine and review current literature, and has tentatively concluded that there is sufficient publicly available scientifically valid information to establish that the ECT device intended for use in treating severe depression can perform safely and effectively and that this information is adequate to allow development of a performance standard for the device products intended for such use.

2. Comments were received from two voting members of the Panel, who reaffirmed the Panel's recommendation. One comment stated that the performance standard proposed by the petitioner is inadequate to assure patient safety. This comment also argued that the petition should have been submitted by those legally responsible for the safety and effectiveness of the device, i.e., the manufacturers. The comment further noted that at the November 4, 1982, Panel meeting, the testimony of numerous former patients regarding sustained memory loss and trauma was not refuted by any speaker on behalf of the petitioner. The second comment supported the statements submitted in the first comment.

FDA agrees that the petitioner's suggested standard for the ECT device may not be an adequate performance standard. FDA disagrees with the comment's suggestion that only manufacturers may seek reclassification of ECT devices. Under section 513(e) of the act, any interested person may petition FDA to change the classification of a preamendments device that has been classified by the agency.

FDA recognizes that some individuals treated with ECT may sustain a persistent organic deficit (see discussion under section IV of this preamble). The agency has, however, at this time, concluded that the benefit obtained from use of the device for the limited indication of severe depression outweighs the associated risks. Moreover, studies that have purported to measure memory loss are inconclusive. FDA's conclusion that the risk/benefit assessment of the ECT device indicated for severe depression is

favorable, and includes memory loss as a risk of treatment.

3. A comment argued that FDA's decision on classification of the ECT device should be based on scientific evidence, and that the materials presented in the reclassification petition are too biased and selective to qualify as scientific. This comment provided an in-depth analysis of many of the materials submitted by the petitioner in support of its request for reclassification.

FDA advises the reclassification of any device is to be based on publicly available, valid scientific evidence that identifies device performance characteristics and the relationship of those characteristics to device risks and benefits. FDA agrees that much of the scientific literature reporting the effectiveness of ECT which was included in the reclassification petition is seriously deficient in one or more respects. After a careful, independent review of the scientific literature on ECT, however, FDA has tentatively concluded that an assessment of ECT performance characteristics necessary to achieve a therapeutic result in the treatment of severe depression and a consideration of device risks supports a class II classification for the device as proposed.

4. Several comments argued that neither research reports nor the "new data" provided in the petition support the petitioner's conclusion that ECT is an effective therapy for schizophrenia.

FDA agrees with the comments. After careful review of the scientific literature and the petition, FDA has tentatively concluded that the evidence regarding the effectiveness of ECT in the treatment of schizophrenia is inconclusive. Assessment of the effectiveness of ECT for this condition is difficult because reports of effectiveness are mainly anecdotal and larger studies are uncontrolled and do not rely on independent patient assessments (Ref. 86). Length of hospitalization has frequently been used as an indicator of effectiveness, and the results are dependent upon clinical impressions and biases of treating psychiatrists (Ref. 86). As a syndrome, schizophrenia lacks the homogeneity in psychopathology, genetic and familial features, and course and response to the defined therapy that characterize severe depression. Schizophrenic patients do not usually exhibit the vegetative symptoms or altered hormonal functions described in depressive states, and improvement in the schizophrenic syndrome is not usually accompanied by systematic changes in these functions. Because the diagnosis is so ill-defined, it is probable

that patients with other syndromes which resemble schizophrenia (e.g., mania, catatonia) have been included in patient groups treated with ECT (Ref. 53). The reported effectiveness of ECT in some schizophrenic populations may therefore be attributed to the lack of homogeneity in the patient population rather than the actual effectiveness of ECT in treating schizophrenia (Ref. 53).

There is general agreement among clinical investigators that ECT does not alter the basic psychopathology of schizophrenia (Refs. 29 and 77). Two articles have been published regarding the use of ECT in schizophrenia (Refs. 77 and 87). Salzman (Ref. 77) reported some positive results based on ECT-induced remission, but concluded that additional research must be undertaken because the studies were poorly designed, e.g., lacked controls, were not blinded, or had other sources of potential bias. Taylor and Fleming (Ref. 87) reported a well-designed, double-blind, sham-ECT study which showed that ECT may have some initial benefit in acute schizophrenia. Although the results of this study are encouraging, it is apparently the only study of its kind, and FDA believes that confirmatory studies are necessary to establish the effectiveness of ECT in the treatment of schizophrenia. Other investigators who have studied ECT extensively, e.g., Fink and Maletsky, have also concluded that proof of effectiveness in schizophrenia requires more data (Refs. 29 and 65). A review of more recent studies by the FDA Task Force indicates that this data has not been forthcoming. The FDA Task Force concludes that the results on the effectiveness of ECT in treating schizophrenia are still inconclusive, although ECT in combination with neuroleptic medication in the treatment of acute onset, therapy resistant schizophrenic patients has been shown to be effective in a small patient cohort (Ref. 97).

Because studies of the effectiveness of ECT in the treatment of schizophrenia are either unreliable or unconfirmed, FDA has tentatively concluded that there is insufficient valid scientific evidence available to determine whether a performance standard can reasonably assure the safe and effective use of ECT for this condition. Should future studies confirm the results reported by Taylor and Fleming, it may be appropriate at that time to consider reclassification of the ECT device intended for use in treating schizophrenia.

5. One comment argued that the "new" data submitted in support of the petition are not relevant to the question

of whether it is feasible to develop a standard for a safe and effective device.

FDA disagrees. FDA in concurrence with the recommendation of the Panel tentatively concludes that a standard for ECT devices is feasible because sufficient scientifically sound information exists to establish a performance standard to provide reasonable assurance of the safety and effectiveness of the ECT device intended for the treatment of severe depression. Device-by-device premarket approval application reviews are unnecessary to reasonably assure the safety and effectiveness of ECT for the treatment of severe depression. A standard is adequate to control the design features and labeling of the device and its electrical output. The device was classified into class III in 1979 because there were not sufficient data available at that time to establish that a standard would assure device safety and effectiveness. New information shows that the benefits of the treatment for severe depression outweigh the risks and that the performance characteristics of the device that define its effectiveness may be reduced to a standard. FDA agrees that the data submitted by the petitioner are not by themselves adequate, but has tentatively concluded, after an independent review of the petition and other publicly available data, that sufficient scientifically valid data are now available to support a performance standard as the appropriate level of regulation for ECT.

6. A comment argued that the petitioner does not present a survey of the "general thrust of the literature" as claimed and that the petition is based on a "sequence of cumulative distortion" by inclusion of the reports of those practitioners who are committed to the use of ECT and by omission of the devastating scientific criticisms contained in the better reviews of the subject.

FDA agrees that the petition may be biased in favor of the use of ECT. The agency has conducted an independent review of the literature, however, and believes that there is sufficient scientifically valid information available to identify the characteristics needed to assure that an ECT device is effective in the treatment of severe depression.

7. Several comments argued that reclassification of the device will have the effect of increasing the use of ECT.

FDA disagrees with the comments. Reclassification of the ECT device intended only for use in treating severe depression will not increase the availability of ECT device products, which are currently available for all

indications. To the extent that use of ECT for treatment of severe depression increases due to a performance standard that reasonably assures safety and effectiveness of the device, no objection would be meritorious.

8. A comment urged FDA to conduct a thorough investigation of ECT involving all interested parties.

Procedures governing classification of medical devices as set forth in the act provide several opportunities for interested persons to submit to the agency any information believed to be germane to the classification issue. Public hearings on the classification of the ECT device were held by FDA in 1979 and in 1982. The agency proposes at this time to reclassify the ECT device intended for treating severe depression only upon the effective date of a performance standard established for the device. The process for establishing performance standards for devices under section 514 of the act provides an additional opportunity for interested persons to present relevant information to the agency.

9. One comment argued that FDA was prematurely restricting the use of ECT in the treatment of disorders other than severe depression. This comment preferred that FDA support research to obtain additional data.

FDA disagrees that the proposed reclassification prematurely restricts the use of ECT. The reclassification only alters the classification for ECT for one indication, and leaves the status quo in play for the balance of other ECT uses. ECT device products intended for use in treatment of disorders other than severe depression will remain in class III. The manufacturers of devices that are labeled as effective for treatment of any condition other than severe depression will be required to obtain premarket approval of such devices under section 515(b) of the act (21 U.S.C. 360e(b)). Because thorough clinical studies are required to support a PMA, FDA anticipates that manufacturers of ECT device products that are intended for treating conditions other than severe depression will conduct further study of the devices under the provisions of the investigational device exemption regulations (21 CFR part 812) to ensure their effectiveness for such uses. FDA is primarily responsible for the regulation of medical device manufacturers and medical device investigations, rather than the actual performance of research to determine the effectiveness of devices for various intended uses.

10. Another comment argued against the proposed action on the basis that reclassification would serve as a

"disincentive" for development of new treatment modalities.

FDA disagrees. Reclassification of the preamendments ECT device intended for use in treating severe depression does not affect the status of ECT devices intended for other uses, including new uses. Not substantially equivalent indications for ECT that postdate the passage of the Medical Device Amendments result in the device being characterized as a new device. Such devices are automatically classified in class III and require premarket approval regardless of the classification of the device subject to the reclassification proposal.

11. A comment proposed that FDA require that ECT device product labeling identify the indications for use for which the ECT device has been reclassified.

FDA agrees. Section 801.109 (21 CFR 801.109) of the general labeling requirements governing prescription devices requires that medical devices include labeling that "bears information for use, including indications * * *"

12. One comment commended FDA for considering the risks associated with ECT treatment and not merely the risks associated with possible device malfunctions.

FDA believes that risk analysis for a medical device must take into consideration the intended use of the device.

13. One comment argued that the ECT device should remain classified in class III for all uses and that the use of ECT should be extremely limited because a seizure can be harmful.

FDA recognizes that there are risks associated with the seizures that are inherent in ECT. However, the benefits afforded by the availability of ECT must also be considered. These benefits included a reduced risk of suicide and self-inflicted injury by severely depressed persons who are successfully treated with ECT. ECT has had a historical role in the treatment of severe depression and valid scientific evidence. The extent of use of ECT is a medical decision that is outside of FDA's regulatory charge. Among other things, the agency is responsible for determining the appropriate classification of devices to reasonably assure their safety and effectiveness. This rulemaking will determine whether class II is appropriate for ECT indicated for use in treating severe depression.

B. Requirement for a Performance Standard Under Section 514 of the Act

14. Several comments supporting the proposed reclassification of the ECT device from class III into class II argued

that establishing a performance standard for the device under section 514 of the act is unnecessary because current ECT device products are both safe and effective, and because the American Psychiatric Association (APA) has developed an in-house standard.

FDA does not agree that a performance standard for the device is unnecessary. Due to the risks of ECT, and the clinical significance of severe depression, class I controls are inadequate to assure the safe and effective use of ECT for the treatment of severe depression. A performance standard will assure the potential for maximum benefit and minimum risk.

Moreover, FDA does not believe that a voluntary standard is sufficient to provide a reasonable assurance of safety and effectiveness. The draft of the American Psychiatric Association standard may not be acceptable to FDA (see comment 2 of section V.A. of this preamble), and even if it were found to be adequate, nonetheless, FDA believes that a mandatory standard, as opposed to a voluntary one, is necessary to reasonably assure the safety and effectiveness of ECT indicated for severe depression. Additionally, even if one assumes the safety and effectiveness of current ECT devices, a level of regulation is still required under the act, and FDA believes that class II is the most appropriate class to control ECT devices used in treating severe depression.

15. One comment opposed the agency's proposal to make reclassification of the ECT device contingent upon establishment of a performance standard for the device. The comment argued that an immediate reclassification action would remove the present uncertainty surrounding the actual classification of the ECT device.

FDA does not agree that there is any uncertainty regarding the classification of the ECT device or that the agency should effect reclassification of the device before a performance standard for it is established. Under § 882.5940 (21 CFR 882.5940), the entire generic type of preamendments device, the electroconvulsive therapy device, is classified into class III. Under § 822.5940 (21 CFR 822.5940), a preamendments ECT device product intended for use for treating any severe psychiatric disturbance, inducing severe depression, by including in the patient a major motor seizure, by applying a brief intense electrical current to the patient's head, is currently classified in class III and is subject to premarket approval. The agency believes that no reason exists to alter its position that the

change in classification should not take effect until the effective date of a performance standard established for the device under section 514 of the act (21 U.S.C. 360(d)).

16. Two comments opposed reclassification contingent upon establishment of a performance standard on the basis that such an action would confound efforts of current manufacturers to remain viable in today's market as well as the efforts of potential manufacturers to enter the market.

FDA disagrees with the comments. Currently, all ECT devices are in class III and are regulated similarly. ECT devices labeled for severe depression will remain in class III until a performance standard is established, thus maintaining the status quo in the interim. The conclusion, therefore, is that the reclassification of the device, contrary to the suggestion of the comments, will not bias persons who manufacture or intend to manufacture ECT devices. Indeed, whether the reclassification occurs prior to the establishment of the standard or at the time of the standard's establishment, the burden of conforming to a standard should be the same.

17. Several comments from citizen-advocacy organizations recommended that FDA accept the recommendation of its advisory committee and proceed with the proposed reclassification effort contingent upon establishment of a performance standard under the act. One of these comments stated that the primary benefit to be gained from the reclassification and standards development effort would be to improve the safety of currently marketed ECT device products by eliminating the more conspicuous shortcomings of the currently marketed ECT device products.

FDA agrees with the comments.

18. The Director of the NIMH submitted general comments on the value of ECT in treating the mentally ill and supported the reclassification of the ECT device from class III into class II on the basis that sufficient evidence is available to develop a performance standard for the device. This comment further noted that a performance standard would enhance the safety and effectiveness of the device by assuring that a minimal, but sufficient, current is used for the therapy, thereby minimizing the confusion and memory loss experienced by patients.

FDA agrees that sufficient information is available at this time to develop a performance standard for the ECT device intended for treatment of severe depression. FDA also agrees that a

performance standard should address the issue of the minimal current required to produce a seizure. There is evidence to indicate that low energy stimuli (i.e., brief pulse) produce fewer adverse effects than the higher energy sine wave stimuli. Electroencephalogram abnormalities are less prominent with pulse stimuli, and a number of studies suggest that pulse or other types of relatively low energy waveforms produce less amnesia (Refs. 17, 18, and 98).

C. Intended Uses

19. Several comments objected to reclassification of the ECT device for "severe depression" on the basis that severe depression is too general a term to describe the depressive disorders which have been shown to respond to ECT.

FDA agrees that the term "severe depression," without further elaboration, is an incomplete technical description of the condition for which effectiveness data has been obtained. However, the term is precisely defined in the introductory paragraph of section IV of this preamble. "Severe depression" is defined as a "major depressive episode with melancholia." This definition is consistent with the definition contained in the current "Diagnostic and Statistical Manual of Mental Disorders" (DSM-III-R; 1987) of the American Psychiatric Association (Ref. 96).

20. Numerous comments from practicing physicians described their successful treatment of patients with a variety of mental disorders with ECT. These comments argued that the indication of "severe depression" is too restrictive. Further, the comments argued variously that, despite the lack of data from well-designed studies, the ECT device should be reclassified into class II for use in the treatment of "affective disorders," mania, or for all indicated uses.

FDA disagrees. The American Psychiatric Association, in its Task Force Report on ECT, states that "Reports on ECT as a treatment for mania are sparse and usually anecdotal" (Ref. 2). Although a single, retrospective review by McCabe (Refs. 61 and 62) has produced encouraging data regarding the use of ECT in treating manic disorders, no comparative studies have been found that are adequate to assess the effectiveness of ECT in manic patients (Refs. 29 and 86). The retrospective review by McCabe is small (28 patients) and is based on the length of hospitalization and the impressions of social recovery. The

results of the review are dependent upon clinical impressions and possible biases of the various treating psychiatrists. Preliminary findings of an ongoing prospective study indicate that ECT may be useful in relatively rapid induction of manic remission (Ref. 99). Data demonstrating the effectiveness of ECT for disorders other than severe depression is lacking. FDA, therefore, believes that reclassification of ECT devices, contrary to the wishes of the comments, must be limited to "severe depression."

21. One comment argued that because manic patients are frequently diagnosed as "schizoaffective," and therefore included in patient populations described as schizophrenic or depressed, the recognition that such patients suffer from affective illness allows application of the results of such studies to the treatment of mania.

FDA agrees that ill-defined diagnoses and poorly defined patient populations have contributed to the lack of adequate data on the treatment of mania with ECT. The agency does not agree, however, that recognition of the heterogeneity of populations previously studied allows the results of those studies to be applied to the treatment of mania.

22. A comment from the petitioner argued that FDA's published intent to retain in class III the ECT device intended for use in the treatment of any condition other than severe depression or schizophrenia on the basis of lack of valid scientific evidence reflects an incorrect appraisal of available data. The comment argued further that to limit the reclassification action would subject thousands of Americans every year to unnecessary suffering and increased mortality. The petitioner recommended that mania be included as an indication for use in any ECT device reclassified into class II. The petitioner appended to the comment a statement regarding the effectiveness of ECT in the treatment of mania. In the appended statement, the petitioner argued that although "the absence of adequate controlled prospective trials make a precise determination of relative efficacy not possible at this time," the unavailability of comparison data is moot, as the majority of manics treated with ECT cannot be effectively treated with pharmacological agents. The petitioner further argued that it is unlikely that rigorously designed investigations would contradict the sparse, anecdotal data available on the effectiveness of ECT in mania.

FDA disagrees. The law requires that, to reclassify a device from class III into class II, publicly available, valid

scientific evidence must show that the proposed reclassification can provide reasonable assurance of the safety and effectiveness of the device. The American Psychiatric Association, in its 1978 Task Force Report on ECT, states that reports on ECT as a treatment for mania are sparse and usually anecdotal, and the Royal College of Psychiatrists has concluded that the usefulness of ECT in this condition is undecided. After review of available data, FDA has tentatively concluded that further scientific study is needed to demonstrate the effectiveness of ECT in the treatment of mania and is therefore proposing that the ECT device intended for use in the treatment of mania in class III and be subject to premarket approval. The FDA Task Force is aware of the well-designed prospective study by J.G. Small (Ref. 99).

23. One comment submitted the preliminary, unpublished results of a small study of the use of ECT and lithium in patients with bipolar disorders. Sixteen patients, randomly selected for use of ECT plus lithium or for lithium alone, have been studied for 5 to 8 weeks. These preliminary results, although limited to a few patients, suggest that patients treated with bilateral ECT combined with lithium may improve more rapidly than patients treated with lithium alone.

FDA encourages scientifically sound study of ECT in the treatment of patients with manic disorders and recognizes the possibility that new data may be available in the future to assure that ECT can be effectively used to treat such disorders. The agency does not believe, however, that sufficient scientifically valid data exist at this time to allow such a determination.

24. One comment objected to reclassification of the ECT device based on specific indicated uses of the device because diagnostic categories are likely to change, thereby creating arbitrary distinctions which may not exist clinically.

FDA agrees that diagnostic categories of mental illness have been subject to change over time. However, although different terms, e.g., endogenous depression, psychotic depression, have been used in the past to designate a single condition "major depressive episode with melancholia," termed severe depression in this document, the medical literature consistently describes the features of this one particular type of depression which FDA has tentatively determined may be safely and effectively treated with ECT. This nomenclature was developed for the medical community by practicing psychiatrists, and the characteristics

that FDA recognizes as constituting severe depression are identified herein and will be identified in a final rule if this proposal is finalized. Accordingly, although nomenclature may vary, severe depression, as defined in the classification regulation, will be constant and understandable within the context of FDA regulations. Of course, if any confusion resulted from a significant, and new unforeseen change in the definition of severe depression, FDA could amend the nomenclature used in the classification regulation.

D. Reclassification Procedures

25. One comment contended that at the November 4, 1982, advisory committee meeting, the testimony of former patients was insultingly termed "anecdotal" and was disregarded.

FDA disagrees. The agency is sensitive to public opinion on proposed actions, and each individual who requested time to present a statement before the advisory panel meeting was allowed to do so. The term "anecdotal" is derived from the Greek, "anekdota," meaning things unpublished, and should not be construed as derogatory. Although § 860.7(c)(2) (21 CFR 860.7(c)(2)) excludes anecdotal evidence, described in the regulation as "isolated case reports, random experience, reports lacking sufficient details to permit scientific evaluation, and unsubstantiated opinions," nonetheless, the record shows that members of the advisory committee took into consideration the testimony presented by former patients when arriving at its recommendation on reclassification. FDA also has considered patient testimony in reaching its tentative conclusions. Patient testimony, whether anecdotal or not, was not ignored by either FDA or the advisory panel in reaching their respective positions.

26. One comment from an organization of former mental patients argued that the advisory committee should include former mental patients who have undergone treatment with ECT.

FDA disagrees with the comment. Advisory committees for the purpose of securing recommendations with respect to the classification of devices are established in conformance with the requirements of section 513(b) of the act (21 U.S.C. 360c(b)), which requires that each panel consist of members with diversified expertise in such fields as clinical and administrative medicine, engineering, biological and physical sciences, and other related professions. In addition, each panel includes a

consumer representative and an industry representative.

The Neurological Devices Panel has included a consumer representative and an industry representative to present the views of the patient community and industry to the panel. FDA believes that by convening public panel meetings and encouraging the public to present their views to the panel at the public meetings constitutes an equitable method of obtaining public opinion. Considering that the advisory panel includes a consumer representative, as specified by law to represent patients in general, including former ECT patients, and because numerous former ECT patients have given personal testimony to the panel, FDA believes that patient interests were adequately considered, notwithstanding the absence of a former ECT patient from the advisory panel.

27. One comment charged that the recommendation for reclassification was predetermined as the members of the panel were "noted shock doctors."

FDA disagrees with the comment. The background, training, and experience of each of the Neurological Devices Panel members completely dispute the comment. Information describing the background, training, and experience of each advisory panel member is a matter of public record.

E. Safety

28. Several comments argued against reclassification of the device on the basis that many questions regarding brain damage and memory loss associated with use of the device have not been satisfactorily answered.

FDA agrees that a precise determination of the extent and duration of memory loss, following ECT treatment has not been established. FDA has, however, assessed the risk of memory loss and, after consulting with the Panel, has tentatively concluded that the benefit of treatment to patients suffering from severe depression with ECT outweighs the risks associated with proper use of the device. Subsequent to consultation with the Panel, the FDA Task Force reviewed more recent research data which show that memory loss can be mitigated by use of pulse rather than sine wave energy, and unilateral electrode placement rather than bilateral electrode placement (Ref. 100). Furthermore, it appears that no permanent effects on memory functioning and nonmemory cognitive functioning occur secondary to ECT therapy (Ref. 101).

29. Several comments disputed the logic that ECT is safe in treating depression and schizophrenia but unsafe for other indications since

treatment is the same for all patients, regardless of diagnosis.

As discussed in section IV of this preamble, FDA recognizes that there are documented risks associated with ECT, and that the extent to which memory deficits persist after treatment remains unclear. The risk of ECT may not be considered in a vacuum, as a regulatory matter. Except for the intended use of severe depression, FDA is unable to document benefits that offset risks of ECT when applied to patients with other conditions. Therefore, except for the treatment of severe depression, no favorable risk/benefit assessment may be made for other treatment indications. In other words, the unmitigated risk of ECT when used, for example, for mania, presents an unacceptable risk for reclassification purposes, while the same risk in an absolute sense, at this time, appears acceptable for the reclassification of ECT indicated for severe depression.

30. Several comments suggested that APA conduct a "CAT-scan" (computed tomography x-ray system) study before and after treatment with ECT as one method of assessing brain damage attributable to the treatment.

APA may elect to pursue whatever research it deems appropriate. Present research using computer tomography and nuclear magnetic resonance imaging techniques indicate that no gross structural damage is incurred secondary to ECT treatment (Refs. 102, 103, and 105). Record information, as discussed above, support the proposed reclassification, and no CAT-scan data suggests that the valid scientific evidence relied upon by FDA, or the conclusions drawn therefrom, are incorrect.

31. One comment submitted a review of an extensive body of literature regarding morphological changes of brain tissue following ECT. This comment concludes that ECT does not produce any histologically detectable changes in brain tissue on the basis that reported changes are artifact resulting from improper tissue preparation techniques.

FDA does not believe that ECT has been shown to be without risk of injury, even though changes in brain tissue may not be observable. The analysis provided by the comment suggests that ECT may not result in changes in brain tissue and appears to argue in favor of FDA's tentative conclusion that the benefits to be gained in the treatment of patients suffering from severe depression outweigh the risks of injury.

32. FDA received nine petitions (85P-0422) which requested the agency to conduct a CAT-scan study using

animals to determine how ECT affects the size and shape of the brain. FDA decided to process the petitions as a comment on the proposed regulations because of the similarity to comment 30 of section V. E. of this preamble.

FDA cannot initiate any studies of the type requested. FDA will not, except possibly on the rarest of occasions, undertake studies to support petition actions because the agency cannot selectively participate as a research arm to support or defeat a petition. The cost of the study and the need for impartiality in making public health decisions weigh against FDA pursuing the course suggested by the petitioners.

F. Development of a Performance Standard

33. Comments from an organization representing the interests of former patients, recommended that the performance standard include: the conditions for which ECT has been shown to be effective, the situations in which the treatment is contraindicated, the physical setting in which ECT devices may be safely used, the training and qualifications of the physicians who administer the treatment, the requirements for personnel who test the equipment, informed consent, specification of acceptable electrical output parameters and frequency of treatments, and the requirement of electroencephalogram monitoring of patients during treatment.

FDA generally agrees that a performance standard is needed to address those factors that necessarily affect the safe and effective use of the device. The content of a performance standard is subject to review by an advisory panel of experts established under section 514(g)(5)(B) of the act (21 U.S.C. 360d(g)(5)(B)) (not the classification panel established under section 513(b) of the act (21 U.S.C. 360c(b))), and will include substantial opportunity for public comment.

34. Some comments urged that the standard include extensive educational information to be distributed by the manufacturer, including detailed instructions for use, specific clinical indications and contraindications, and specific materials to be presented to the patient verbally and in writing.

FDA believes that a performance standard must address all factors that are necessary to assure safe and effective use of the device; however, the actual content of a performance standard including labeling, is not being considered at this time. The establishment of the standard under section 514 of the act (21 U.S.C. 360d),

requires that a separate advisory committee be established, fully independent of the section 513(b) advisory committee that provides advice regarding device classification (see section 514(g)(5)(b) (21 U.S.C. 360d(g)(5)(b))). Proceedings before the standards committee and the agency will specifically address the contents of a standard.

35. One comment from a practicing physician urged, in the interest of controlling the cost of treatment, that FDA not develop a performance standard that dictates the type of current to be used, placement of electrodes, or the presence of an anesthesiologist during treatment.

FDA believes that, although patient treatment costs should be considered in any public health policy determination, all factors that are necessary to assure safe and effective use of the ECT device must be addressed by a performance standard.

36. A comment pointed out the public attempt to regulate ECT devices through local initiatives, such as the one in Berkeley, CA, and recommended that the establishment of a performance standard for the ECT device be a public process.

The FDA standard setting process is a public process. FDA recognizes that there is great public concern regarding the ECT device and agrees that the public should participate in the establishment of a performance standard. The standard setting process described in section 514 of the act (21 U.S.C. 360d), provides an opportunity for any interested person to participate. In particular, section 514(a)(5)(C) of the act (21 U.S.C. 360d(a)(5)(C)), provides for the participation of "informed persons representative of scientific, professional, industry, or consumer organizations" in the establishment of performance standards. A mechanism therefore exists to encourage and permit public participation in the standards-setting process.

VI. FDA's ECT Task Force Analysis and Results

FDA formed a Task Force to examine and review the scientific literature pertaining to ECT for the period of 1982 through 1988. The Task Force was to determine what evidence exists for or against reclassification for any or all of the following conditions: severe depression, mania, and schizophrenia. The APA submissions, the New York Academy of Sciences Proceedings, the National Institute of Health Consensus Development Conference Report, and

over 200 other pertinent articles were reviewed (Ref. 104).

The literature reviewed contained a preponderance of evidence supporting the use of ECT in the treatment of severe depression. Although there is some evidence to support the use of ECT in certain specific cases and subsets of acute onset therapy resistant schizophrenia, FDA's Task Force believes that the quantity and quality of these data are insufficient to support reclassification of ECT for this indication. There is also recent evidence in prospective studies that induction of remission of manic episodes using bilateral ECT may be as or more effective than drug therapy; however, the quantity of this data is insufficient to support reclassification of the device from class III into class II for this indication.

Even in the treatment of severe depression, many questions remain about the method of use of ECT. It is clear that memory loss occurs, in particular, some permanent loss of short-term memory relating to the period during which the treatment is given, and apparently also some temporary loss of long-term memory. However, permanent effects on memory functioning should not occur and cognitive functioning appears to be unaffected by ECT. The variability in treatment modalities and patients makes it difficult to select a single, universally effective modality, but the evidence is clear that in terms of least side effects produced, a definite priority order of treatments is apparent. In other words, the use of ECT should progress as necessary from unilateral to bilateral electrode placement, from pulse to sine wave energy, and from subcritical to minimum amount of energy needed to induce seizure activity.

The questions of possible damage caused by ECT, the damage thresholds, and margin of safety for each modality and various intensity levels remain unanswered by the information reviewed by the Task Force. Current available evidence does not indicate gross structural damage; however, it does indicate that the risk of brain changes is outweighed by the benefits.

Based on its independent review of the scientific literature, the Task Force recommended that the ECT device be reclassified from class III into class II only for severe depression, and that such reclassification become effective upon the effective date of a performance standard established for the device. For use in any condition other than severe depression, the Task Force recommended that the device remain in class III and have approved applications for premarket approval.

In addition to others, FDA consulted with NIMH. The agency has made some minor changes per their comments. They will be commenting more substantively during the official comment period.

VII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

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VIII. Environmental Impact

The agency has determined under 21 CFR 25.24(e)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IX. Economic Impact

The April 5, 1983, notice of intent invited interested persons to comment

on the economic impact of the reclassification of the ECT device for treating severe depression and schizophrenia from class III into class II. None of the comments received mentioned any adverse economic impact. Generally, reclassification of preamendments devices from class III into class II should not have any adverse economic impact because manufacturers are relieved of the cost of complying with the premarket approval requirements in section 515 of the act. Although there may be offsetting costs that a manufacturer of the device could incur to comply with the provisions of a performance standard under section 514 of the act (21 U.S.C. 360d), the economic impact would be the result of actions taken to comply with the standard and not the act of reclassification, and would likely not exceed costs that may be associated with the device in its present regulatory classification. Nonetheless, the economic impact of the establishment and promulgation of a performance standard will be assessed prior to its actual proposal as part of the agency's regulatory planning process under Executive Order 12291.

After considering the economic consequences of reclassifying the device as discussed above, FDA concludes that this proposal would not be a major rule as specified in Executive Order 12291. Further, the agency certifies under the Regulatory Flexibility Act (Pub. L. 96-354), that the proposed rule would not have a significant economic impact on a substantial number of small entities.

Interested persons may, on or before November 6, 1990, submit to the Dockets Management Branch (address above) written comments on this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the name of the device and the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 882

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 882 be amended as follows:

PART 882—NEUROLOGICAL DEVICES

1. The authority citation for 21 CFR part 882 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

2. Section 882.5940 is revised to read as follows:

§ 882.5940 Electroconvulsive therapy device.

(a) *Electroconvulsive therapy device intended for use in treating major depressive episode with melancholia—*

(1) *Identification.* An electroconvulsive therapy device is a device intended for use in treating major depressive episode with melancholia (severe depression), as defined in the "Diagnostic and Statistical Manual of Mental Disorders" (DSM-III-R; 1987) of the American Psychiatric Association, by inducing in the patient a major motor seizure by

applying a brief intense electrical current to the patient's head.

(2) *Classification.* Class II (performance standards).

(3) *Effective date.* The device identified in paragraph (a)(1) of this section shall remain in class III until the effective date of a final performance standard promulgated under the procedures of section 514 of the Federal Food, Drug, and Cosmetic Act.

(b) *Electroconvulsive therapy device intended for use in treating any condition other than major depressive episode with melancholia—*(1)

Identification. An electroconvulsive therapy device is a device intended for use in treating any psychiatric condition other than major depressive episode

with melancholia (severe depression), as defined in the "Diagnostic and Statistical Manual of Mental Disorders" (DSM-III-R; 1987) of the American Psychiatric Association, by inducing in the patient a major motor seizure by applying a brief intense electrical current to the patient's head.

(2) *Classification.* Class III (premarket approval).

(3) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 882.3.

Dated: June 9, 1990.

James S. Benson,

Acting Commissioner of Food And Drugs.

[FR Doc. 90-20750 Filed 9-4-90; 8:45 am]

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Test Report Federal Register

Wednesday
September 5, 1990

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 91

Operation Over the High Seas and Within
the North Atlantic Minimum Navigation
Performance Specification Airspace;
Advance Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 26327; Notice No. 90-21]

RIN 2120-AD59

Operation Over the High Seas and Within the North Atlantic Minimum Navigation Performance Specification Airspace.**AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Advance notice of proposed rulemaking (ANPRM).

SUMMARY: The Federal Aviation Administration (FAA) is considering developing a regulation that would establish requirements for operation of U.S.-registered general aviation aircraft consistent with International Civil Aviation Organization (ICAO) navigation requirements for flight over the high seas. These requirements would promote safe operation of U.S.-registered general aviation airplanes within Minimum Navigation Performance Specification (MNPS) airspace. These requirements would also provide safety standards for operation of U.S.-registered general aviation aircraft outside the airspace of the United States, beyond the service range of ICAO Standard NAVAID'S (VOR, VOR/DME, NDB), and beyond the coverage of Air Traffic Service (ATS) radar. The requirements would apply only to operations over the high seas.

DATES: Comments must be received on or before January 3, 1990.

ADDRESSES: Comments on this advance notice of proposed rulemaking should be mailed or delivered, in triplicate, to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-10), Room 915-G, Docket No. 26327, 800 Independence Ave., SW., Washington, DC 20591.

Comments may be examined in the Rules Docket, Room 915-G, weekdays (except Federal holidays) between 8:30 and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. William T. Cook, General Aviation and Commercial Division, (AFS-850), Federal Aviation Administration, 800 Independence Ave. SW., Washington, DC 20591; telephone: (202) 267-3840.

SUPPLEMENTARY INFORMATION:**Comments Invited**

This advanced notice of proposed rulemaking (ANPRM) is being issued in accordance with the FAA's policy of encouraging early public participation in

rulemaking proceedings. An ANPRM is issued when there is a need or a requirement to consider rulemaking but reasonable outside inquiry and FAA resources do not provide a sufficient basis upon which to propose a specific course of action. It is helpful, therefore, to invite public participation in identifying and selecting a course of action before a Notice of Proposed Rulemaking (NPRM) is developed and issued.

All interested persons are invited to participate in the making of the proposed rules by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, or economic impacts that might result from adoption of the proposals contained in this notice are invited. Communications should identify the regulatory docket or notice number, and be submitted in triplicate to the address noted previously in the "Address" section of this document. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on any proposed rules that may follow this advance notice. The proposals contained in this advanced notice may be changed as a result of comments received from the public. All comments submitted will be available for examination in the Rules Docket in Room 916 of the FAA Building, both before and after the closing date. A report summarizing the public comments concerning this advance notice will also be available for review in the Rules Docket. Commenters wishing to have the FAA acknowledge receipt of their comments submitted in response to this notice must submit with their comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 26327." The postcard will be dated, time stamped, and returned to the commenter by the FAA.

Availability of ANPRM

Any person may obtain a copy of this ANPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center (APA-430), 800 Independence Avenue SW., Washington, DC 20591, or by calling the Office of Public Affairs at (202) 267-3484. Communications must identify the docket number of this notice. Persons interested in being placed on a mailing list for future notices should request a copy of Advisory Circular (AC) No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

The reduction of air traffic control lateral separation in oceanic airspace from 120 nautical miles (nm) to 60 nm and the establishment of MNPS airspace was proposed on a worldwide basis at ICAO's 9th Air Navigation Conference in 1977. Pursuant to action by ICAO on December 29, 1977, designating certain airspace over the North Atlantic as MNPS airspace, the FAA designated MNPS airspace in appendix C of part 91 (42 FR 64880, December 29, 1977).

Appendix C defines MNPS airspace and § 91.705 provides operating requirements for that airspace. On August 24, 1983, ICAO revised North Atlantic (NAT) MNPS airspace boundaries. In Amendment 91-193 (50 FR 51193, December 13, 1985), the FAA revised the description of MNPS airspace in appendix C of part 91 of the Federal Aviation Regulations (FAR) to coincide with the revised ICAO description of MNPS airspace.

Appendix C of part 91 states, in pertinent part, that NAT MNPS airspace is that volume of airspace between flight level 275 and flight level 400 extending between latitude 27 degrees north and the North Pole, bounded in the east by the eastern boundaries of control areas Santa Maria Oceanic, Shanwick Oceanic and Reykjavik Oceanic; and in the west by the western boundary of Reykjavik Oceanic, the western boundary of Gander Oceanic, and the western boundary of New York Oceanic, excluding the areas west of 60 degrees west and south of 38 degrees 30 minutes north.

The objective behind the designation of MNPS airspace is to provide for safe separation of aircraft and to enable operators to derive maximum economic benefit from the improvement in navigation performance demonstrated in recent years. The reduction in separation made possible by the designation of MNPS airspace results in benefits to users of the NAT Organized Track System (OTS) by providing additional tracks nearer the optimum (time) track. The MNPS airspace designation has also provided for more efficient separation of the ever-increasing random general aviation traffic that utilizes the airspace.

The NAT MNPS airspace is one of the most heavily used oceanic airspace areas in the world due to the large number of flights traveling between North America and Europe. Therefore, minimum navigation performance specifications have been developed and implemented by ICAO for aircraft operating in that designated airspace.

ICAO member nations, called States of Registry (States), are required to ensure that their aircraft that intend to be operated within MNPS airspace possess a specific navigational performance capability, and that flight crews use internationally approved standard operating procedures to enable to the flight to adhere to assigned routes within the stringent requirements of MNPS. In addition, there are contingency procedures specific to the airspace that must be known and used by pilots. Authorization by States after confirmation that the aircraft meets the minimum navigational performance specification is required to operate within MNPS airspace.

Amendment 91-144 (42 FR 64880, December 29, 1977) provides that no person may operate a civil aircraft of U.S. registry in the NAT MNPS airspace unless that aircraft has approved navigation performance capability meeting the standards adopted by ICAO. The navigation performance capability as required by § 91.705 and section 2 of appendix C of part 91 of the FAR is as follows:

(a) The standard deviation of lateral track errors shall be less than 6.3 NM (11.7 Km). Standard deviation is a statistical measure of data about a mean value. The mean is zero nautical miles. The overall form of data is such that the plus and minus of 1 standard deviation about the mean encompasses approximately 68 percent of the data and plus or minus 2 deviations encompasses approximately 95 percent.

(b) The proportion of the total flight time spent by aircraft 30 NM (55.6 Km) or more off the cleared track shall be less than 5.3×10^{-4} (less than 1 hour in 1,887 flight hours).

(c) The proportion of the total flight time spent by aircraft between 50 NM and 70 NM (92.6 Km and 129.6 Km) off the cleared track shall be less than 13×10^{-5} (less than 1 hour in 7,693 flight hours).

According to Working Paper 33 from the September, 1988 meeting of the North Atlantic Systems Planning Group of ICAO (which has responsibility for all aviation activities pertaining to the North Atlantic), the error rate in MNPS airspace on the OTS for general aviation operations is estimated to be not greater than 16 for every 10,000 crossings. The error rate for military and commercial operations is estimated to be 5.4 and 1.4, respectively, for every 10,000 crossings. (The general aviation error rate is 2.9 to 11.4 times higher than for military and commercial operations).

The error rate in MNPS airspace on random routes for general aviation operations is estimated to be 78 for

every 10,000 crossings. The error rate for military and commercial operations is expected to be 14 and 3.2, respectively, for every 10,000 operations.

This information shows that general aviation operators account for a disproportionately large percent of the total errors. Additionally, the Working Paper shows that the number of errors are also increasing disproportionately with general aviation aircraft traffic increases.

ICAO's NAT SPG is evaluating aircraft operations in oceanic areas in an effort to further reduce air traffic separation requirements. However, the recent increase in the number of U.S.-registered general aviation aircraft oceanic navigational errors has concerned that NAT SPG and threatens to require an increase in separation standards.

The MNPS concept includes the premise that each operator flying in MNPS airspace must have prior authorization from the civil aviation authority of the State in which the aircraft is registered. Because it has become popular for operators of one State to make lease arrangements for aircraft registered in another State, it has become necessary for each State to require each operator and its aircraft to receive specific authorization to operate in MNPS airspace. In addition, the following obligations have been placed on operators after receiving authorization to operate in MNPS airspace:

(1) The approved aircraft minimum navigation installation must be serviceable and must have been checked for accuracy prior to entry into MNPS airspace. If subsequent lack of serviceability reduces the navigational capability below the required minimum for MNPS operations after entry into MNPS airspace, then the controlling air traffic control (ATC) unit must be advised so as to allow for any necessary adjustments of separation from adjacent aircraft. The deviation authority in appendix C, section 3, of part 91 of the FAR that would permit ATC to authorize an aircraft operator to deviate from the requirements of § 91.705 is intended for this situation and is only appropriate in U.S. airspace, New York Flight Information Region (FIR).

(2) Pilots must adhere to internationally approved standard operating procedures while in MNPS airspace. Except in an emergency, deviation from the ATC-cleared track must not be made without prior approval of the controlling ATC unit.

(3) There must be a high standard of aircrew discipline in entering, monitoring, and cross checking data in

the automatic navigation systems to prevent errors arising from erroneous waypoint entries.

(4) There must be a high standard of coordination between aircrews and ATC units to ensure that misunderstandings over the route to be flown do not occur.

To ensure that safety is not compromised through failure of operators to meet the conditions set forth above, contracting States are required to take appropriate action concerning operators who fail to meet the navigation specifications, including restricting flight or withdrawing approval of those operators to fly in the NAT MNPS airspace.

Part I: General Aviation Aircraft Operating in MNPS Airspace

Air carrier and/or operators certified under parts 121, 125, or 135 of the FAR are required to ensure that aircraft intended to be operated within MNPS airspace possess appropriate navigational equipment and that flight crews use proper procedures to enable the flight to adhere to assigned routes within the stringent requirements of MNPS. This is accomplished through the requirements of operations specifications and subsequent training programs. The FAA has determined that regulations for operators of U.S.-registered general aviation aircraft that intended to operate within the MNPS airspace under part 91 of the FAR are not adequate to ensure an equivalent level of safety. There are no provisions, for example, in part 91 of the FAR, to establish operations specifications or a training program.

Section 91.705 of the FAR states, in pertinent part, that no person may operate a civil aircraft of U.S. registry in MNPS airspace unless the aircraft has approved navigation performance capability which complies with the requirements of appendix C of part 91. Some operators submit to an inspection of their equipment at an appropriate FAA district office, and obtain a certificate of authorization to operate in MNPS airspace while others operate in MNPS airspace without such approval. Additionally, § 91.705 does not require training or testing of the airmen who operate the navigation equipment.

If there is an excessive number of errors, it may become necessary for ICAO to consider increasing separation standards for all aircraft until improvement has been achieved. This action would impose a severe economic hardship upon many users of this airspace. Member States of ICAO have voiced concern over the increased

number of navigation errors by U.S.-registered general aviation aircraft operating in MNPS airspace. The FAA considers it important to take appropriate steps to rectify this situation.

Part II: General Aviation Aircraft Operating Over the High Seas Other Than in MNPS Airspace

Notwithstanding the increased traffic in MNPS airspace, the vast majority of general aviation U.S.-registered aircraft operating over the high seas do so outside MNPS airspace. These operations include single and multiengine aircraft over the Atlantic, Pacific, Caribbean and virtually all remaining areas of the high seas. While conditions and ensuring problems when operating an aircraft over the North Atlantic in the winter may vary from those over the Pacific Ocean or Caribbean in the summer, basic navigation performance requirements are the same. Very special situations and problems are encountered with flights in areas of few or no ICAO Standard NAVAID'S.

Section 91.511 of the FAR specifies radio equipment for overwater operation for U.S.-registered large and turbine-powered multiengine airplanes. There are no such requirements for U.S.-registered small general aviation aircraft operating over the high seas.

Member States of ICAO have reported an increasing number of U.S.-registered general aviation aircraft becoming lost, disoriented, or low on fuel. A search and rescue effort frequently becomes necessary. In addition to being prohibitively costly, an increased number of ditchings and fatalities have been reported.

A special meeting of ICAO representatives was held in Reykjavik, Iceland on May 10 and 11, 1989, to consider the safety of general aviation aircraft flights over the NAT region in other than MNPS airspace.

Representatives from Iceland reported that International General Aviation (IGA) flights within Reykjavik Control area/flight information area (Common Traffic Advisory/FIR) in 1987 accounted for some 4% of the total international flights through the area. Although not a great proportion of the total traffic, IGA flights nevertheless require relatively greater attention by ATS staff than the remainder of the traffic. In fact, all search and rescue operations over the ocean from Iceland recently have been directed towards IGA flights. Today, most of the Search and Rescue (SAR) actions from Iceland are associated with what appears to be inexperience or lack of planning by some IGA pilots. This is

evident by the number of rescue intercepts of aircraft straying from their planned track, being uncertain of their position, and running out of fuel, causing inability to reach their destinations or arrival with little or no reserve fuel remaining. Fatal accidents involving IGA aircraft have been increasing. In view of its geographical position, Iceland is very much affected by these events, which place a heavy burden on its SAR services.

Like all other NAT states, representatives from Denmark reported that they have encountered the various problems involved in the provision of ATS and SAR service to IGA aircraft crossing the NAT region. IGA flights in the Sondrestrom FIR account for approximately 3.6% of the flights conducted under both instrument and visual flight rules (IFR/VFR) below FL 195. Nevertheless, they constitute about 82% of the expenses for aviation SAR services. The general reasons for the alerts, searches, and fatalities, according to the Danish representatives, are poor planning, poor navigation, insufficient fuel, and lack of knowledge of the northern NAT region flying environment.

Representatives from Canada reported that investigations conducted of incidents and accidents involving IGA aircraft in the NAT region show that the main problem is inexperienced pilots.

Representatives from the United States reported that although the number of IGA aircraft flights in the NAT is small, these flights are responsible for generating virtually all of the search and rescue operations over the ocean.

Flights over the Pacific are often of even longer duration with similar problems magnified by the greater distances. U.S.-registered general aviation aircraft are operated over these distances (often with long-range fuel tanks), often with inexperienced and untrained pilots. Additionally, single-engine and multiengine aircraft are frequently operated across the Pacific with inadequate navigation/communication equipment. Several general aviation pilots, for example, were reported to have flown across the Pacific to Hawaii with only LORAN navigation equipment only to discover, while en route, that there is no LORAN NAVAIID coverage in this area. Other pilots have unsuccessfully attempted to cross with unapproved Global Positioning (GPS) navigation equipment.

Amendment 91-101 established subpart D of part 91 of the FAR (37 FR 14758, July 25, 1972), which prescribes general operating rules for large and

turbojet-powered multiengine airplanes. Section 91.511 of subpart D specifically prescribes operable radio communication and navigational equipment appropriate to the facilities to be used when the flight is over water for more than 30 minutes flying time or is 100 nautical miles from the nearest shoreline. Notwithstanding the requirements placed on large and turbojet-powered airplanes, there are no such requirements for U.S.-registered small general aviation aircraft operating in the same environment. However, § 91.703(a)(1) states, in pertinent part, that when over the high seas, operators of U.S.-registered aircraft must comply with ICAO Annex 2.

The FAA has determined that appropriate steps should be taken to rectify this apparent disparity.

Proposed Actions

The purpose of the proposed amendment is to promote the safe operation of U.S.-registered general aviation aircraft over the high seas and within MNPS airspace. Additionally, this amendment would provide regulatory support to ICAO navigation requirements established for flight through international oceanic airspace or over the high seas.

The proposed amendment addresses two broad subjects: (1) The operation of U.S.-registered general aviation aircraft in MNPS airspace; and (2) the operation of U.S.-registered general aviation aircraft over the high seas not designated as MNPS airspace.

Part I: U.S. Registered General Aviation Aircraft Operating in MNPS Airspace

In establishing the MNPS concept, it was decided by ICAO that all operators desiring to operate in MNPS airspace must show that navigation equipment to be used is capable of continuously complying with the required specifications set forth in appendix C of part 91 of the FAR.

Operators certificated under parts 121, 125, and 135 of the FAR must receive authorization from the FAA in their operations specifications and normally fly a validation flight prior to conducting flights into MNPS airspace. In order to obtain the required operations specifications, an operator must have an approved inspection program for the applicable equipment and an approved training program for its crews.

To accomplish the same level of safety for operators of U.S.-registered general aviation aircraft desiring to operate in MNPS airspace under part 91 of the FAR, the FAA proposes to amend part 91 to require an operator to obtain a

letter of authorization from an FAA flight standards district office.

Advisory Circular (AC) No. 91-49, dated August 23, 1977, "General Aviation Procedures for Flight in North Atlantic Minimum Navigation Performance Specifications Airspace," sets forth acceptable means for persons operating under part 91 of the FAR to obtain an authorization to operate within MNPS airspace. Based on such subjects as training of pilots/crew members and information received in response to this ANPRM, the FAA may amend AC No. 91-49.

Part II: General Aviation Aircraft Operating Over the High Seas Other Than in MNPS Airspace

The FAA has determined that minimum safety standards should be established for all U.S.-registered general aviation aircraft operating over the high seas other than in MNPS airspace rather than limiting these safety standards to large and turbine-powered multiengine airplanes.

Accordingly, the FAA is considering an amendment to part 91 of the FAR to require an operator to obtain a letter of authorization to operate a U.S.-registered general aviation aircraft outside the airspace of the United States, and beyond the service range of ICAO Standard NAVAID's and beyond the coverage of ATS radar. An operator would be able to apply for a letter of authorization from an FAA flight standards district office. Assisted by information received in response to the ANPRM, the FAA may draft an advisory circular to set forth recommended procedures for an operator desiring to operate as described above.

Issues for Public Consideration

The FAA requests the participation of all interested persons, and the identification of data, literature, statistics, research papers, or other documents available in the private sector, that may be relevant to the issues involved in Part I: General Aviation Aircraft Operating in MNPS Airspace, and/or Part II: General Aviation Aircraft Operating Over the High Seas Other Than in MNPS Airspace. Public participation will allow the FAA to consider thoroughly the topics specifically contained in this notice. All comments will be reviewed and considered in any future rulemakings by the FAA regarding these subjects.

Interested persons are invited to express views and to make recommendations for regulatory changes. The issues and topics for discussion have been identified on the

basis of amendments previously adopted by the FAA, petitions for exemption, and information obtained from member States of ICAO.

Participants also should address any economic consequences (e.g., implementation costs, potential savings) of the proposals contained in this ANPRM and any changes they recommend as well. The FAA encourages those persons submitting comments to include any source of supporting data that may be applicable to the views or recommendations.

Although the FAA has considerable data on many of the recommendations and questions listed below, any additional data that the public may have on these recommendations is requested. Additionally, the FAA notes that comments on this ANPRM as well as comments on any subsequent notices may be incorporated into an AC rather than into a regulation. Accordingly, the FAA invites comments on the following specific topics, among others:

Part 1: General Aviation Aircraft Operating in MNPS Airspace

a. Should an additional maintenance program be required for general aviation airplane/navigation equipment to operate in MNPS airspace? If so, what elements should such a program contain?

b. Should a test be required for general aviation airplane/navigation equipment to operate in MNPS airspace? If so, what should be tested?

c. Are special qualifications required to be a pilot-in-command/crew to operate a general aviation aircraft in MNPS airspace? What are they?

d. Should a training program be required for a pilot-in-command/crew to operate a general aviation aircraft in MNPS airspace? If so, what should it contain?

e. Should a validation program be required for a pilot-in-command/crew to verify that a general aviation aircraft has the navigation performance capability to operate in MNPS airspace? If so, how could this be done?

f. What application process would be most convenient to persons seeking a letter of authorization?

g. Should the application process for a letter of authorization be different for pilots planning short flights versus pilots planning long flights; experienced versus inexperienced pilots; pilots planning repetitive flights? If so, how?

Part II: General Aviation Aircraft Operating Over the High Seas Other Than in MNPS Airspace

a. What changes should the FAA consider for the operation of U.S.-

registered general aviation aircraft outside the airspace of the United States and beyond the service range of ICAO Standard NAVAID's and beyond the coverage of ATS radar?

b. What changes should the FAA consider for the navigation equipment and navigation performance capability for the operation of U.S.-registered general aviation aircraft outside the airspace of the United States and beyond the service range of ICAO Standard NAVAID's and beyond the coverage of ATS radar?

c. What changes should the FAA consider for a maintenance program for general aviation aircraft/navigation equipment for the operation of U.S.-registered general aviation aircraft outside the airspace of the United States and beyond the service range of ICAO Standard NAVAID's and beyond the coverage of ATS radar?

d. What changes should the FAA consider for a testing program for general aviation aircraft/navigation equipment for the operation of U.S.-registered general aviation aircraft outside the airspace of the United States and beyond the service range of ICAO Standard NAVAID's and beyond the coverage of ATS radar?

e. What changes should the FAA consider for the qualifications of an International General Aviation (IGA) pilot-in-command/crew for the operation of U.S.-registered general aviation aircraft outside the airspace of the United States and beyond the service range of ICAO Standard NAVAID's and beyond the coverage of ATS radar?

f. What changes should the FAA consider for a training program for an IGA pilot-in-command/crew for the operation of U.S.-registered general aviation aircraft outside the airspace of the United States and beyond the service range of ICAO Standard NAVAID's and beyond the coverage of ATS radar?

g. What changes should the FAA consider for a testing program for an IGA pilot-in-command/crew for the operation of a U.S.-registered general aviation aircraft outside the airspace of the United States and beyond the service range if ICAO Standard NAVAID's and beyond the coverage of ATS radar?

h. What application process would be most convenient to persons seeking a letter of authorization?

i. How should the application process for a letter of authorization be different for pilots planning short versus long flights; experienced versus

inexperienced pilot; pilots planning repetitive flights?

Economic Impact and Benefits

Public comments concerning the economic impact and benefits are specifically sought in addition to comments on the technical aspect of the proposed amendments.

Agencies of the Federal government are required by Executive Order 12291 to examine any proposed regulation to ascertain its economic impact and to adopt only those regulatory programs in which potential benefits to society clearly outweigh the potential costs to society. Any regulatory proposal by the FAA must be accompanied by an evaluation quantifying and/or qualifying, to the extent possible, the benefits and costs of such proposals. Although the FAA does not have sufficient information to generate definitive costs at this time, depending upon the equipment currently on board the aircraft, the amount of training required, the rapidly changing state-of-the-art of avionics equipment, etc., the costs could vary from minimal to as much as \$10,000 per aircraft. These costs, however, would be incurred only by operators of aircraft seeking to fly over the high seas. The FAA will not adopt any regulation unless costs will be less than benefits. Therefore, it is essential that comments for or against the proposal include the economic impact as perceived by the commenter. With this in mind, the FAA poses the following economic questions:

a. What are the estimated costs of adding communication and navigation equipment of various capabilities and specifications to general aviation aircraft for flights over the high seas?

b. What costs would be involved in obtaining a letter of authorization from

an FAA district office by a general aviation operator to undertake flights over the high seas?

c. What costs would be required in a maintenance program for general aviation airplane/navigation equipment for flights over the high seas?

d. What costs would be required in a testing program for general aviation airplane/navigation equipment for flights over the high seas?

e. What costs would be required for a pilot/crew training program to operate general aviation aircraft in MNPS airspace/over the high seas?

f. What costs would be involved in a testing program to test the capability of pilot/crew to operate general aviation aircraft in MNPS airspace/over the high seas?

g. What benefits would be achieved from the various requirements (e.g., added communication and navigation equipment, maintenance programs, equipment testing, training, etc.)? To whom (e.g., foreign countries) would these benefits accrue?

h. Small entities are those small businesses or small not-for-profit organizations that are independently owned and own but do not necessarily operate nine or fewer aircraft. How would small entities share in the benefits and costs resulting from this rulemaking?

Federalism Implications

The regulations discussed herein, if adopted, would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient

federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

This ANPRM seeks information from interested persons, including operators of general aviation aircraft, instructors, pilot schools, maintenance personnel, and the general public, in determining what changes the FAA should consider for the operation of U.S.-registered aircraft over the high seas in both MNPS airspace and in airspace not defined as MNPS airspace. The FAA has determined that this advance notice of proposed rulemaking is not significant under DOT Regulatory Policies and Procedures [44 FR 11034; February 26, 1989]. Information is being requested, and no economic or regulatory impact is imposed on any person by this action. A full regulatory evaluation will be prepared if further rulemaking is warranted based on comments received as a result of this notice.

List of Subjects in 15 CFR Part 91

Air traffic control, Aircraft, Airmen, Aviation safety.

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat 1180); 42 U.S.C. 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

Issued in Washington, DC, on August 29, 1990.

Thomas C. Accardi,
Acting Director, Flight Standards Service.

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Reader Aids

Federal Register

Vol. 55, No. 172

Wednesday, September 5, 1990

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-3447

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230
---------------------	----------

Other Services

Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the hearing impaired	523-5229

CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Administrative Orders:	
Memorandums:	
August 29, 1990.....	36257

7 CFR

29.....	35885
403.....	35886
405.....	35886
406.....	35886
409.....	35886, 35888
416.....	35886
422.....	35886, 35888
425.....	35886
430.....	35886
435.....	35886
437.....	35886
441.....	35886
443.....	35886
445.....	35886
446.....	35886
447.....	35886
450.....	35886
451.....	35886
454.....	35886
455.....	35886
456.....	35886
910.....	35889
932.....	35891
944.....	35891
967.....	35893
1076.....	35894
1922.....	35895
1930.....	35895
1944.....	35895

Proposed Rules:	
1965.....	35907

8 CFR

212.....	36259
----------	-------

12 CFR

Proposed Rules:	
225.....	36282

13 CFR

Proposed Rules:	
121.....	35908

14 CFR

21.....	36259
23.....	36259
39.....	36264-36270
Proposed Rules:	
39.....	36284
91.....	36592

15 CFR

775.....	35896
776.....	36271

17 CFR

140.....	35897
----------	-------

21 CFR

Proposed Rules:	
197.....	36289
882.....	36578

22 CFR

1102.....	35898
-----------	-------

23 CFR

140.....	35903
Proposed Rules:	
635.....	36289

25 CFR

286.....	36272
----------	-------

26 CFR

1.....	36274
Proposed Rules:	
1.....	36290

32 CFR

651.....	35904
----------	-------

33 CFR

126.....	36248
151.....	35986
154.....	36248
155.....	35986, 36248
156.....	36248
158.....	35986
165.....	36278

Proposed Rules:	
127.....	35983
154.....	35983

40 CFR

Proposed Rules:	
51.....	36458
52.....	36290, 36458
81.....	36290
171.....	36297

42 CFR

412.....	35990
413.....	35990

44 CFR

64.....	36278
---------	-------

46 CFR

25.....	35986
540.....	35983
Proposed Rules:	
25.....	35983
32.....	35983
34.....	35983
50.....	35983

FEDERAL REGISTER PAGES AND DATES, SEPTEMBER

35885-36256.....	4
36257-36596.....	5

52.....	35983
53.....	35983
54.....	35983
55.....	35983
56.....	35983
57.....	35983
58.....	35983
59.....	35983
71.....	35983
76.....	35983
91.....	35983
92.....	35983
95.....	35983
107.....	35983
108.....	35983
150.....	35983
153.....	35983
162.....	35983
163.....	35983
169.....	35983
170.....	35983
174.....	35983
182.....	35983
189.....	35983
190.....	35983
193.....	35983

47 CFR

73.....	35905, 36279
---------	--------------

Proposed Rules:

1.....	35909
73.....	35909, 35910, 36297- 36299

50 CFR

32.....	35906
661.....	36280

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last List August 22, 1990

